

25

Clerk - Supreme Court, D. C.

JUL 5 1944

CHARLES ELMORE DROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

October Term, 1943.

\_\_\_\_\_  
No. 227.  
\_\_\_\_\_

FRANCISCO BALLESTER-RIPOLL, *Petitioner,*

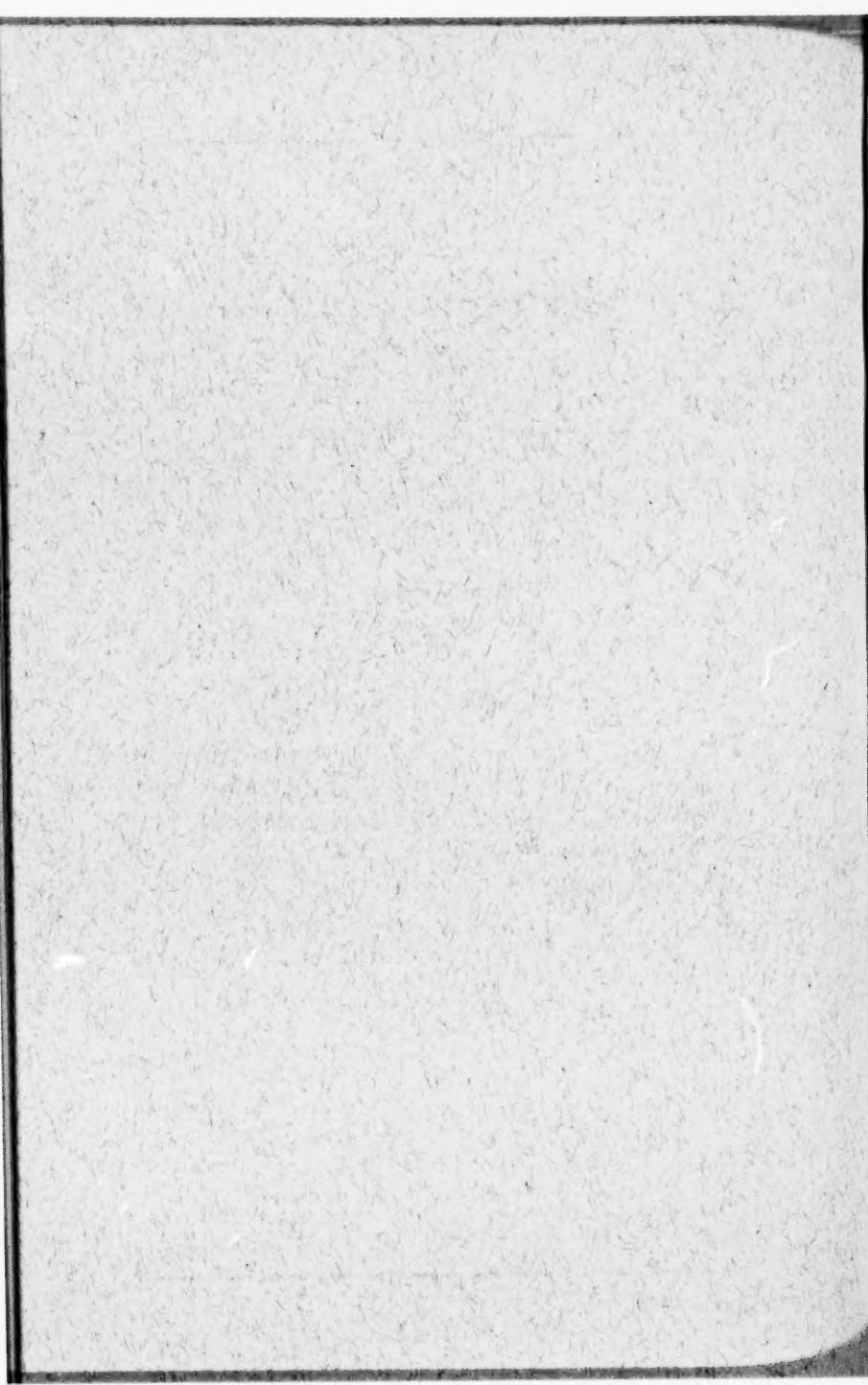
v.

COURT OF TAX APPEALS OF PUERTO RICO, *et al., Respondents.*

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS, FIRST CIRCUIT,  
AND SUPPORTING BRIEF.**  
\_\_\_\_\_

WILLIAM CATTRON RIGBY,  
OSCAR SOUFFRONT,  
J. J. ORTIZ ALIBRAN,  
*Attorneys for Petitioner.*

RIGBY, LEON and WEILL,  
FRED W. LLEWELLYN,  
*Of Counsel.*



# SUBJECT INDEX.

	Page
Petition .....	1-34
Introductory .....	1-2
Jurisdiction .....	2
Statutes .....	2-6
Statement of the Case .....	7-8
Opinion of the Insular Supreme Court .....	8-14
Additional Facts .....	14-16
Opinion of the Circuit Court of Appeals .....	16-23
Questions Presented .....	23-31
Petitioner's Position .....	31
Reasons for Granting the Writ .....	31-34
Brief in Support of Petition .....	35-82
Opinions Below .....	35
Jurisdiction .....	35
Questions Presented .....	35
Statutes .....	36
Statement of the Case .....	36
Specification of Errors to be Urged .....	36
Summary of Argument .....	36
Argument .....	36-82
Point I. The provision of Section 2 of the Organic Act, that: "The rule of taxation in Puerto Rico shall be uniform", requires inherent or intrinsic uniformity; not merely geographic uniformity "throughout the Island" . .	36-44
Point II. The Legislature of Puerto Rico is without authority to levy income taxes upon a progressive graduated scale imposing higher percentages upon higher incomes, because the Legislature is bound by the iron rule which the Congress has seen fit to impose upon it by Section 2 of the Organic Act, "That the rule of taxation in Puerto Rico shall be uniform" . . . .	44-57
Point III. The taxation of stockholders on dividends received by them from domestic corporations is double taxation, and likewise violates the requirement that the rule of taxation in Puerto Rico be "uniform" .....	57-59

- Point IV. Taxation of individual partners on partnership profits distributed to them, after the partnership as a unit has already been taxed on the same profits, is, even more flagrantly, not only "double taxation" on the same profits, and a violation of the rule of uniformity in taxation which the Congress has seen fit to impose upon the Legislature of Puerto Rico, but is also a taking of property without due process of law, and denial of the equal protection of the laws ..... 60-64
- Point V. The Legislature of Puerto Rico does not possess the power, [without directly amending the community property laws], to levy the income tax against the husband alone upon the entire aggregate income of the conjugal community ..... 64-72
- Point VI. Section 12(a) of the Income Tax Act, as amended by the Act of May 13, 1941, is wholly invalid: ..... 72-75
- A. The lower Courts correctly held void its *exception* discriminating in favor of American citizens ..... 72
- B. But the lower Courts were in error in not holding that the invalidity of this exception invalidated the entire Section ..... 72-75
- Point VII. The later November, 1941, amendment to Section 3 of the Income Tax Act, limiting the retroactivity to the beginning of the calendar year 1941, relieved petitioner of retroactive liability for the additional 1940 taxes under the earlier April amendment of that same year... 75-78
- Point VIII. These 1941 amendments to the Income Tax laws of Puerto Rico, taken as a whole, are arbitrary and confiscatory, amounting to taking property for public use without compensation, and without due process of law; and amounting also to an attempt to levy taxes for assumed "general welfare" purposes, rather

	Page
than taxation for usual governmental purposes under the power delegated to the Legislature by the Congress by Section 3 of the Organic Act .....	78-81
Conclusion .....	82
Appendix: Constitutional and Statutory Provisions .....	83-101
<i>Constitution:</i> .....	83
Art. 4, Sec. 3, Clause 2 .....	83
Fifth Amendment .....	83
<i>Federal</i> .....	83
Organic Act for Puerto Rico .....	83
Sec. 2, Par. 1 .....	83
Par. 22 .....	83
Sec. 3 .....	83
Sec. 34, Par. 9 .....	83
<i>Puerto Rico</i> .....	84-101
Civil Code of Puerto Rico (1930 Ed.) .....	84-89
Spanish Civil Code, Art. 1415 .....	89
Code of Civil Procedure of Puerto Rico (1933 Ed), Sec. 248 .....	89
Code of Commerce—Partnerships .....	89-91
Political Code: Property Subject to Taxation ..	91-92
Income Tax Act of August 6, 1925, pertinent Sec- tions, with 1941 amendments .....	92-101

## TABLE OF CASES.

Bachrach v. Nelson, 349 Ill. 579; 182 N. E. 909, [1932]	50
Ballester v. Court of Tax Appeals, 60 Dec. P. R. 768.	8
Bender v. Pfaff, 282 U. S. 127.....	10, 18, 40, 68
Blodgett v. Holden, 275 U. S. 142.....	80
Brushaber v. Union Pacific R. R. Co., 240 U. S. 1, 24.....	45, 80
Butts v. Merchants Transportation Co., 230 U. S. 126	58
Casal v. Sancho Bonet, Treasurer, 53 P. R. Rep. 609 .....	27, 32, 68, 70
Corn v. Fort, 170 Tenn. 377; 95 S. W. (2d) 620.....	60
Connelly v. San Francisco, 164 Calif. 101, 127 Pac. 834	47

	Page
Cullerton v. Chase, 174 Wash. 363; 25 Pac. (2d) 81	
[1933] .....	50
Domenech v. Havemeyer, 49 F. (2d) 849.....	11, 20
	43, 52, 54, 55-56
Derchy v. Kansas, 264 U. S. 286.....	28, 35, 58
Edwards v. California, 314 U. S. 160.....	13, 72
Eliasberg Bros. Merc. v. Grimes, 204 Ala. 492; 86 So.	
56 [1920] .....	50
Evans v. McCabe, 164 Tenn. 672; 52 S. W. (2d) 159	
[1932] .....	50
Fantauzzi et al v. Bonner, 34 P. R. R. 464.....	60
Florida v. Mellon, 273 U. S. 12.....	54
Flournoy v. Wiener, 321 U. S. 253.....	16, 40, 68
Fraser v. McCouway & Torley Co., 82 Fed. 257.....	72
Gallardo v. Puerto Rico Light & Power Co., 18 F. (2d)	
918 .....	20, 43, 54
Graves v. N. Y. ex rel O'Keefe, 306 U. S. 466.....	51
Goodell v. Koch, 282 U. S. 118.....	10, 18, 40, 68
Hammonds v. Commissioner of Internal Revenue, 160	
F. (2d) 420; 422 C. A. A.....	66
Heiner v. Donnan, 285 U. S. 312.....	80, 81
Helmich v. Hellman, 276 U. S. 233.....	58
Hill v. Wallace, 259 U. S. 44.....	28, 36, 56
Hines v. Davidowitz .....	72
Hoeper v. Wisconsin, 284 U. S. 206.....	10, 16, 27, 40
	41, 43, 68, 69, 71, 80
Hopkins v. Bacon, 272 U. S. 122.....	10, 18, 40, 68
Illinois Central Railroad v. McKendree, 203 U. S. 514	58
Johnson, W. D. v. Commissioner, 1 Tax Court (U. S.)	
1041 .....	66
Juanita Limestone Co. v. Fagley, 187 Pa. 193; 40	
Atl. 977 .....	72
Kawato, <i>Ex Parte</i> , 317 U. S. 69 .....	13, 72
Kelley v. Kalodner, 320 Pa. 180; 181 Atl. 598 [1935]..	50
Kepner v. United States .....	42
Knowlton v. Moore, 178 U. S. 41 .....	11, 12, 18, 19, 20, 23, 37, 46
Kotta, <i>Ex Parte</i> , 200 Pac. 957 [California].....	72
Loiza Sugar Co. v. Domenech, Treas. 43, P. R.	
R. 855 .....	43, 52, 54, 55, 56
Louisville Gas Co. v. Coleman, 277 U. S. 32.....	14
Lynch v. Hornby, 247 U. S. 339.....	58
Maynard v. Hill, 125 U. S. 190 .....	78

	Page
National City Bank v. De La Torre, 54 P. R. R. 651	32, 70
Nichols v. Coolidge, 274 U. S. 521	69, 80
People of Puerto Rico v. Russell & Co., 288 U. S. 476	60
People of Puerto Rico v. Shell Co., 302 U. S. 253	78
Piacentina v. Buscaglia, Treas. 59 P. R. R. [59 P. R. Dec. (Spanish Text) ] 767	10
Poe v. Seaborn, 282 U. S. 101	10, 17, 18, 27, 33, 67, 68, 70, 71
Pollock v. Farmers Loan & Trust Co., 157 U. S. 429	49, 51, 52
<i>Same v. Same</i> (on rehearing) 158 U. S., 601	28, 49, 51, 52, 73
Posadas, Collector v. National City Bank, 296 U. S. 497	30, 76
Riccio v. Hoboken, 69 N. J. L. 649 (Pitney, J.)	36, 58
San Juan Trading Co. v. Sancho Bonet, Trasurer, 114 F. (2d) 969	10, 11, 20, 32, 44, 55, 73, 75
Sanchez Morales & Co. v. Gallardo, 18 F. (2d) 550	43, 54
Serra v. Mortiga, 204 U. S. 470	42
Smallwood v. Gallardo, 275 U. S. 56	76
Sprague v. Thompson, 118 U. S. 90	28, 57, 73
State Tax Commission v. Aldrich, 361 U. S. 174	10
Steward Machine Co. v. Davis, 301 U. S. 548	54
Truax v. Raich, 239 U. S. 33	13, 72
The Employers' Liability Cases, 207 U. S. 463	58
United States v. Hudson, 299 U. S. 498	58
United States v. Malcolm, 282 U. S. 792	10, 18, 40, 42, 68, 70
United States v. Robbins, 269 U. S. 315	16, 18, 33, 68, 70
Union Packing Co. v. Rogan, 17 F. Supp. 934	74
Untermeyer v. Anderson, 276 U. S. 440	80
Warren v. Charlestown, 2 Gray 84	73
Welch v. Henry, 305 U. S. 134	58, 59
Williams v. Standard Oil Co. 278 U. S. 235	28, 36, 57
Wisconsin v. J. C. Penney Co. 311 U. S. 435	58
Yick Wo v. Hopkins, 116 U. S. 356	13, 72



IN THE  
**Supreme Court of the United States**

October Term, 1943.

---

No. 227.

---

FRANCISCO BALLESTER-RIPOLL, *Petitioner,*

v.

COURT OF TAX APPEALS OF PUERTO RICO, *et al., Respondents.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.**

---

*To the Honorable, The Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Petitioner, Francisco Ballester-Ripoll, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on April 5, 1944, affirming the judgment of the Supreme Court of Puerto Rico; which, in turn, had affirmed, except in one

respect, the judgment of the Court of Tax Appeals of Puerto Rico sustaining a "reliquidation" by the insular Treasurer of the income tax of this petitioner for the calendar year 1940.

This case presents important questions of the powers of the Legislature of Puerto Rico.

### **Jurisdiction.**

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

### **Statutes.**

Constitutional and statutory provisions chiefly involved are in the Appendix (*infra*, pp. 83-101). Pertinent parts of Section 2 of the Organic Act, and of the Puerto Rican Income Tax Law and the three amendatory Acts of 1941, are also in the margin of the opinion of the Circuit Court of Appeals (R. 53-62).

The case revolves about the applicability, retroactively for the year 1940, and the validity, of amendments to the Income Tax Laws of Puerto Rico made by Acts of the Legislature, No. 31 of April 12, and No. 159 of May 13, 1941, at the Regular Annual Session of that year,<sup>1</sup> as further amended by Act No. 23, November 21, 1941, at the following Special Session.<sup>2</sup>

Act No. 31 of April 12, as amended a month later by Act No. 159 of May 13, changed the theretofore existing Income Tax Law of Puerto Rico,<sup>3</sup> by:

<sup>1</sup> Laws of Puerto Rico, 1941, pp. 478-540, and 972-982, respectively, pertinent paragraphs in Appendix, *infra*, pp. 92-101.

<sup>2</sup> Laws of Puerto Rico, Special Session, 1941, pp. 72-90.

<sup>3</sup> The "Income Tax Act of 1924". Act No. 74, approved August 6, 1925; Laws of 1925, pp. 400-550, as subsequently amended [but not theretofore in any way material here, prior to the Acts of 1941 here in question].

(1) Increasing [Sec. 12-(a)] the "normal tax" on "every person a resident of Puerto Rico" to eight per cent (8%) per annum; but (2) Providing, *as an exception*, "except that in case of an *American citizen*, resident of Puerto Rico" the rate on the first \$3,000.00 shall be three (3%) per cent, and *then upward, progressively, on a sliding scale* for amounts above \$3,000.00; (3) Increasing the "normal tax" on persons not residents of Puerto Rico to ten (10%) per cent per annum, but again with (4) *an exception*,—"except that in the case of non-residents who are *American citizens* the normal tax shall be eight (8%) per cent on the net income"; (5) Providing *double taxation* on profits from partnerships and on dividends received by shareholders of corporations;<sup>4</sup> and further (6) By requiring<sup>5</sup> a joint return from "a husband and wife living together," covering the total income of both, and that:

"the normal and additional tax shall be computed on the aggregate income. The net or gross income received by any one of the spouses shall not be divided between them";

thus directly reversing the prior provisions of Section 24(b) of the Act of 1924, which had been in force up to that time, and which permitted husband and wife living together to elect either that each should make an individual return or that they should make a joint return, as they saw fit; but (7) *without amending*, or even mentioning, the old estab-

---

<sup>4</sup> Sec. 12-(a); "Provided, That said normal tax may also be assessed and collected on the income received by shareholders for dividends", thus expressly repealing the credit theretofore allowed against the normal tax of amounts received as partnership profits or dividends [Income Tax Act of 1924, Sec. 18-(a)], upon which the partnership or the corporation has already paid the tax.

<sup>5</sup> By Section 13, amending Section 24(b) of the prior Income Tax Act of 1924.

lished provisions of the Civil Code and of the Political Code of Puerto Rico<sup>6</sup> embodying the community property system in Puerto Rico, under which the wife has an independent property right in one-half of the community property [although the husband is the manager of the property], which the Legislature has no power to change or to amend indirectly, or by implication, in view of the provision of Section 34 of the Organic Act<sup>7</sup> dealing with the amendment of insular statutes.

(8) The tax on corporations and partnerships (Sec. 28) was increased to a flat rate of 19% ; but again (9) *with an exception*: "except that domestic corporations and partnerships shall pay a tax of seventeen (17) per cent".

(10) Corporations were defined as including [Sec. 2-(a)-(2)] also

"in addition to other similar entities, any organization created for the purpose of carrying out operations, or accomplishing certain ends, and which, in like manner as corporations, may continue to exist regardless of the changes in the membership thereof, or in the persons sharing therein, and whose business is managed by one person alone, a committee, a board, or any other organization acting in a representative capacity"; and

(11) the definition of the term "partnership" was extended [Sec. 2-(a)-(3)] so that "it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit."

---

<sup>6</sup> Civil Code of 1930, Secs. 91-95, 252, 1267-1268, 1295, *et seq.*; Appendix, *infra* pp. 84-89. Political Code, Sec. 290. Code of Civil Procedure, Sec. 248; Appendix, *infra*, pp. 91-92, 89.

<sup>7</sup> "Jones Law", Act of March 2, 19-17, c. 145, 39 Stat. 951, 962, Par. 9, Sec. 34:

"No law shall be revised, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length."

(12) The first paragraph of Section 18 of the former law<sup>8</sup> which had allowed individuals credits against the normal tax for amounts received as partnership profits or as dividends, was completely stricken out; and (13) The Act of April 12, 1941, the first of these Acts, also redefined partnership "earnings" as including [Sec. 4-(a)]

"any share or right to share in a partnership, which belongs to its partners or participants in each taxable year out of the earnings or profits of any partnership" [i.e., *whether or not distributed to the partners*].

(14) The Act of April 12, 1941 [not changed in this respect by that of May 13] provided (Sec. 2) by its amendment of Section 3 of the former law of 1924 that:

"Section 3.—(a) \* \* \* The first taxable year, for the purpose of this Act, shall be the calendar year 1940, or any fiscal year ending during the calendar year 1940."

But the third of these Acts, Act No. 23 of the Special Session, approved November 21, 1941, some six months later, but during the same calendar year 1941, by its Section 1 [Laws of 1941, Special Session, p. 74], further amended that same Section 3 of the former Act, so as to provide that *the first taxable year*, "for the purposes of this Act" *shall be the calendar year 1941*,—instead of the year 1940,—this provision reading as follows in the November Act:

"Section 3—(a) \* \* \* The first taxable year, for the purposes of this Act, shall be the calendar year 1941, or any fiscal year ending during the calendar year 1941."

(15) The Act of April 12, the first of these 1941 Acts, also *very sharply increased*,—by amendment of Section 13 of the

---

<sup>8</sup> Sec. 18 (a), Act of 1925, *supra*, Laws of 1925, at p. 446; which had provided, under the caption "*Credits Allowed Individuals*";

"Section 18.—For the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as partnership profits or dividends \* \* \*

former Income Tax Act,—*the surtaxes*, on a sliding scale. The Act of May 13 did not change this; but the Act of November 21 again very sharply increased them.<sup>9</sup>

The aggregate cumulative effect of the changes, as applied by the Treasurer, retroactively, to the tax liability of an alien resident in Puerto Rico, a married man living with his wife, was, in the case of the present petitioner,<sup>10</sup> *an increase of six hundred twenty-three (623%) per cent.*<sup>11</sup>

---

<sup>9</sup> Act No. 31, Laws of 1941, at p. 848; Act No. 159, Laws of 1941, pp. 972-974; Act. No. 23, Laws of 1941, Special Session, pp. 72, 74-78.

<sup>10</sup> A native of Spain; since then became a naturalized citizen of the United States; but during the year 1940 still a citizen of Spain and hence an alien resident of Puerto Rico.

<sup>11</sup> But even this does not, however, in fact, measure the full extent of the actual increase in the income taxation against this petitioner, for the calendar year 1940, if these amendatory Acts of April 12 and May 13, 1941, are to be considered as valid and as being actually retroactive so as to include the calendar year 1940; because in that case, not only is the petitioner to be subjected to taxation, as his return was "reliquidated" by the Treasurer, upon the amounts of money he received that year, as shown by his March 15, 1941, return (R. 4-5), both upon his dividends from the Puerto Rico domestic corporations, the Banco Popular and the Plata Sugar Company, and also upon the partnership profits he received from Ballester Hermanos, which had themselves of course already been taxed at the lower income tax rates on corporations and on partnerships then in effect, in 1940, under Section 28 of the Income Tax Law of 1924 then in force; but also, if these 1941 Acts are valid and are retroactive back to 1940, then the higher rate must be applied also against the corporations and the partnership, and their taxes must be likewise "reliquidated" and correspondingly increased above what they had actually already paid for that calendar year; and so the calculations of the dividends and of the partnership profits, respectively, then accruing and paid by them to the petitioner, must be recast, and the differences must in some way be charged back to him in the end,—thus, for practical purposes, once again further increasing his own taxes, even beyond and above the 623% increase which, even without this recalculation of the dividends and partnership profits, the insular Supreme Court noted his taxes had already been increased (R. 35) over those due from him for the year 1940 under the former law then in force.

### Statement of the Case.

This case is here upon an "Agreed Statement of the Case" under Section 12 of Rule 14 of the Circuit Court of Appeals for the First Circuit filed in the Supreme Court of Puerto Rico on June 16, 1943, and approved by that Court on June 21, 1943 (R. 2, *et seq.*; 44). The case originated in an appeal by this petitioner to the Court of Tax Appeals from an "administrative decision<sup>12</sup> of the Treasurer of Puerto Rico embodied in a notice to petitioner, August 18, 1941, "reliquidating" his income taxes for the year 1940, which he had already paid in full upon filing his income tax return on the preceding March 15, 1941, in strict accordance with the law then in force. The Treasurer's notice (R. 2-3) advised him that his 1940 tax:

"has been reliquidated by this Department in accordance with the provisions of Act No. 31 approved April 12, 1941, and Act No. 159, approved May 13, 1941, which amend with retroactive effect to January 1, 1940, the Income Tax Act No. 74, of August 6, 1925, as it has been subsequently amended, considering the original net income reported in your aforesaid return,"

so as to increase his 1940 tax from the amount of \$454.39 [which, added to his wife's tax, paid in a similar amount, made an aggregate of the taxes for husband and wife, under the law then in force, of \$908.78],—correctly paid by him on the preceding March 15th in accordance with the law then in force,—[as it had been during the whole of the taxable year 1940, and still remained in force at the time the return was made and the tax was paid on March 15, 1941],—up to the amount of \$6,070.49, thus leaving a balance still due from petitioner, as the Treasurer calculated it (after crediting him the amount of his wife's taxes

<sup>12</sup> So denominated by the Treasurer; letter September 10, 1941, to this appellant; quoted in the first opinion of the Supreme Court of Puerto Rico in this case, July 23, 1942 (60 P. R. Dec. 768, 771).

already paid, as though they had been paid as a part of his), of \$5,667.71, for which the Treasurer demanded payment.

The Court of Tax Appeals dismissed petitioner's appeal, for want of jurisdiction (R. 6); but was reversed by the Supreme Court of Puerto Rico in certiorari proceedings, and directed to hear and decide the case on its merits (R. 6; *Ballester vs. Court of Tax Appeals*, 60 P. R. Dec., 768, 782-783. Thereafter the Court of Tax Appeals decided the appeal on the merits, against petitioner, upholding the validity of the Legislature's Acts of 1941 here in question, in every way, and their retroactivity back to January 1, 1940, thus including the taxable year 1940; and approving the Treasurer's calculation of the "reliquidation", retroactively, of petitioner's 1940 tax. "Each and every one of the questions submitted for consideration were decided against the petitioner, and the tax imposed by the Treasurer of Puerto Rico was upheld." ("Agreed Statement", *supra*, R. 6.)

### Opinion of the Insular Supreme Court.

(1) On petitioner's further appeal to the insular Supreme Court, that court (Opinion, R. 8-39) upheld the validity of the 1941 Acts of the Legislature, and their retroactivity back to January 1, 1940 (thus including the taxable year 1940 here in question), and the Treasurer's action in "reliquidating" petitioner's tax for that year; and therefore affirmed the judgment of the Court of Tax Appeals, *except in one respect*. The insular Supreme Court, noting (Opinion, *supra*; R. 24-29) that:

"During 1940 the petitioner was an alien residing in Puerto Rico. He complains that Section 1 of Act No. 159, Laws of Puerto Rico, 1941, in providing for a higher rate of taxation on the income of a resident alien than on the income of a resident citizen, is violative of the equal protection clause of the Organic Act;"

held that (R. 28-29):

“this discrimination against aliens violates not only the equal protection provision of our Organic Act, which is a generic clause, but also the more specific *proviso* ‘That the rule of taxation in Puerto Rico shall be uniform’.”

The insular Supreme Court did not, however, because of such invalidity of the *exception* in favor of “American citizens” contained in the *excepting* clause inserted in Section 12(a) of the Income Tax Act by Section 1 of Act No. 159 of May 13, 1941, *supra*,<sup>13</sup> either (1) simply strike down that *excepting clause*, so as to leave in effect the general eight (8%) per cent rule announced by the first clause of Section 12(a) as thus amended by that Act of May 13, 1941<sup>14</sup>, or else (2) strike down the entire section because of the manifest improbability of the Legislature’s having intended to extend the broad general rule announced in the first clause of the section to all residents of Puerto Rico, irrespective of nationality, thus imposing on everyone the eight (8) per cent normal tax; but, instead, the insular Supreme Court held (R. 29) that the only effect of striking down the *excepting* clause was to reduce the resident alien’s tax to “the same rate as that of resident citizens”,—that is to say, in effect, to *extend the exception to everyone*, instead of striking it down entirely because of its manifest invalidity.

In other words, the effect of that Court’s ruling on this point was *to strike down the general rule of the normal tax* announced in the first clause of the section, *and to substitute for it*, as the general rule, *the very exception* in favor of American citizens *which the Court had found discrimina-*

<sup>13</sup> Laws of Puerto Rico, 1941, at p. 974; Appendix, *infra*, p. 94.

<sup>14</sup> “Section 12.—(a) There shall be levied, collected and paid for each taxable year on the net income of every person a resident of Puerto Rico a normal tax of (8) per cent of the amount of the net income in excess of the credits provided in Section 18”. (Laws of P. R., 1941, *supra*, at p. 974; Appendix, *infra*, p. 94.

tory and violative of the Constitution and of the Organic Act.

In support of that holding the insular Court (R. 29) relies upon the prior decision of the Circuit Court of Appeals for the First Circuit in *San Juan Trading Co. v. Sancho, Treasurer*, 114 F. (2d) 969, 975.<sup>15</sup>

(2) The insular Court, after a long discussion ("Opinion", R. 8-20) of the applicability and effect of the community property laws of various States of the Union, with reference to the question of making joint or several income tax returns for a husband and wife living together<sup>16</sup> upholds

---

<sup>15</sup> But apparently without noticing the radical difference in this respect between the statute there involved, and that here in question. (*Confer, infra*, pp. 72-75.)

<sup>16</sup> Discussing largely questions of policy; "Feminist organizations \* \* \*. Some organizations \* \* \* as a matter of high principle \* \* \*. Those who have fought \* \* \* simply a product of the economy reality \* \* \*, *et seq.* (R. 8-9 *et seq.*)

It seeks to distinguish and declines to follow (R. 15, 16-19) the decision of this Court in *Hoeper v. Wisconsin*, 284 U. S. 206, 213-218, as well as those in *United States v. Malcolm*, 282 U. S. 792, 794, and its companion cases, *Poe v. Seaborn*, 282 U. S. 101, 109-18; *Goodell v. Koch*, 282 U. S. 118, 120-121; *Hopkins v. Bacon*, 282 U. S. 122, 125-126; and *Bender v. Pfaff*, 282 U. S. 127, 130-132.

The insular Court says in this connection, with particular reference to *Hoeper v. Tax Commission*, *supra*, 284 U. S. 206, that (R. 16) :

"We recently went through a somewhat laborious process to distinguish a United States Supreme Court tax opinion which was shortly thereafter overruled. (Compare *Piacentini v. Buscaglia, Treas.*, 59 P.R.R. [59 P. R. Dec. (Spanish text), 767], with *State Tax Comm'n v. Aldrich*, 316 U. S. 174). Whether that process will be repeated in the present situation is not for us to say. Impartial commentators of wide repute have expressed views to that effect."

It then proceeds (R. 16-20) to discuss opinions of text writers, and magazine articles, and dissenting opinions, tending to throw doubt upon the soundness of the decisions of this Court in those cases, concluding as above indicated that (R. 20) those decisions of this Court are not to be followed in

(R. 20) the provision of Section 13, as amended by the Act of April 12, 1941, *supra*, for a single return covering the whole income of both husband and wife; holding also, specifically, that it "is not invalid in its application to the income reported by the petitioner and his wife for 1940."

(3) The Court then holds (R. 21-23) that the provisions for "sliding scale" progressive rates, both for the normal tax and also for the surtax, do not violate the requirement of Section 2 of the Organic Act, "That the rule of taxation in Puerto Rico shall be uniform", nor the requirements of that Section of "due process of law," and of "equal protection of the laws", saying (R. 22):

"In construing an insular taxing statute, our Circuit Court of Appeals has said that if 'the act applies equally in all parts of Puerto Rico, and all \* \* \* in each class are treated the same \* \* \* the tax is not obnoxious to the uniformity clause \* \* \*,' of the Organic Act. (*San Juan Trading Co. v. Sancho*, 114 F. (2d) 969, 972.) As the statutes involved herein do not provide for different rates of taxation at different places within Puerto Rico but provide only for higher rates at higher income levels, we find no violation of the rule for uniform taxation in Section 12 and 13. Most of the cases cited by the petitioner, including *Domenech v. Havemeyer*, 49 F. (2d) 948, 52 (C. C. A. 1st, 1931) and *Loiza Sugar Co. v. Domenech, Treas.*, 43 P.R.R. 855, have no bearing on this particular problem. We have considered them carefully, but see no purpose in extending this opinion further by distinguishing them in detail."

And in considering this question the insular Supreme Court wholly failed to notice that this Court in its opinion in *Knowlton v. Moore*, 178 U. S. 41, 83-85, 87-88, speaking by MR. JUSTICE WHITE had expressly recognized, back on May 17, 1900, that the word "uniform", standing alone, un-

---

this case; and ends the discussion of this point by upholding the provision of the April 12, 1941, amendment to Section 13, requiring a single joint return, and taxation upon that return, as upon a single unit.

qualified, in such a restrictive provision as the clause in Section 2 of the Organic Act here in question, enacted by the Congress seventeen years later, March 2, 1917, requires “*intrinsic*”, “*inherent*” uniformity in taxation; not mere geographic uniformity; that (*Knowlton v. Moore, supra*, 178 U. S. at pp. 84, 87):

“the word ‘uniform’ or the words ‘equal and uniform’ are now generally found in state constitutions, and as there contained have been with practical unanimity interpreted by state courts as applying to the intrinsic nature of the tax and its operation upon individuals.”<sup>17</sup>

In fact the insular Supreme Court wholly fails to notice in any way,—even to mention,—this Court’s decision in *Knowlton v. Moore*, at all.

(4) The insular Court then (R. 22-24) upholds the provision of the 1941 amendments eliminating the former credits against the normal tax to individual taxpayers for amounts of dividends and of partnership profits received by them, upon which the income taxes have already been paid by the corporation or by the partnership as the case might be. But in discussing this point, the Court wholly fails to consider (R. 22-24, *supra*) the effect of the provision of Section 2 of the Organic Act requiring, as above quoted, “That the rule of taxation in Puerto Rico shall be uniform”; and also wholly fails to take into consideration the effect of the widened definition of “partnerships” “for the purposes of this Act”, prescribed in the April 12, 1941, amendment to Section 2 of the Income Tax Act, directing, as above quoted (*ante*, p. 4) that the term “partnership” shall include,—not only civil, business, industrial, agricultural and professional partnerships, as well as those of any other kind, “whether or not its constitution is set forth by public deed or private document”, but also, in addition (Act No. 31, *supra*; Laws of 1941, at p. 480):

<sup>17</sup> *Confer, infra*, Point I, pp. 38-39.

“it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit.”

The insular Supreme Court, apparently wholly failing to notice this provision, says (R. 24):

“But the term ‘partnership’ is not used in our Income Tax Act in the common law sense. It is a translation of the term ‘*sociedad*’ found in the civil law.”<sup>18</sup>

(5) The insular Court then (R. 24-29) considers the discrimination against aliens residing in Puerto Rico, in favor of resident citizens, made by the amendment to Section 12-a of the Income Tax Law by the second amendatory Act No. 159 of May 13, 1941, *supra* (Laws of 1941, at p. 974), in view of the fact that during 1940 petitioner “was an alien residing in Puerto Rico”, and determines that this discrimination was beyond the power of the Legislature.<sup>19</sup>

It then, however (R. 28-29), as above indicated (*ante*, pp. 8-10), holds that the effect of this part of its decision,—instead of invalidating and striking down the discriminatory exception in favor of American citizens,—is, in effect, to *rewrite the main clause of the paragraph*, and to engraft upon the main clause itself what the Legislature had stated as an exception, thus converting the exception into the statement of the principal rule as to the normal tax.

(6) The Court then proceeds (R. 29-34) to consider the validity of the *retroactive provision* of the Act of April 12, 1941, amending Section 3 of the former Income Tax Law so as to make the amendments made in the law by that amendatory Act retroactive to and including the calendar year 1940 [the provision hereinbefore quoted; *ante* p. 5]. The Court upholds the validity of this retroactive provision, even with

<sup>18</sup> Confer *infra*, pp. 60-64.

<sup>19</sup> Citing *Yick Wo v. Hopkins*, 116 U. S. 356, 369; *Truax v. Raich*, 239 U. S. 33, 42; *Ex parte Kawato*, 317 U. S. 69, 72-74; and *Edwards v. California*, 314 U. S. 160.

relation (R. 34) to the retroactive requirement of a single return for husband and wife as to the income from the community property.

(7) Finally the insular Court (R. 35-39), advertent to the 623% increase made in the Treasurer's "reliquidation" of petitioner's 1940 tax, considers at some length whether or not these amendatory Acts of 1941 are "confiscatory", and therefore deprive petitioner of his property without "due process of law", as he contended in that Court.<sup>20</sup> Overruling that contention, the insular Court nevertheless says (R. 39:

"Lest we be misunderstood, we add that we do not hold nor do we intimate that there is no limit beyond which income taxation cannot go. We hold only that this is a question of degree, and that, under all the recited circumstances, the case before us does not fall on the wrong side of the line. (See dissent of Mr. Justice HOLMES, *Louisville Gas Co. v. Coleman*, 277 U. S. 32, 41)."

### **Additional Facts.**

1. The Treasurer's "reliquidation" of petitioner's return of March 15, 1941, of his income for the calendar year 1940, shows (R. 4-5) that the principal part of it was derived from (a) dividends from two domestic corporations of Puerto Rico, the Banco Popular and the Plata Sugar Company, and (b) profits received from a partnership, Ballesster-Hermanos, all of which were exempt in his hands from the normal tax, under the former law, the policy of which was to avoid double taxation; because both the corporations and the partnership had been themselves taxed under that law on those same profits,—[as they are likewise taxed, but at a higher rate, under the 1941 amendments].

2. And again,—because during the whole year 1940 petitioner was a married man, living with his wife, and all of this income was community property under the laws of Puerto Rico,—he and his wife had properly made separate

<sup>20</sup> And in the Circuit Court of Appeals as well; and now contends here. (*Confer, infra*, pp. 28-30, 78-81).

returns under that law, on March 15, 1941, of their 1940 incomes, respectively, sharing (and dividing) this community property income between them, half and half. The Treasurer's "reliquidation" of those returns, treating the entire amounts of both of them, added together, as the single income of the husband alone,—and therefore putting it into much higher brackets under the sliding scale provisions of the 1941 amendments for both the normal tax and the surtaxes,—increased the tax astronomically.

3. There were also submitted in evidence<sup>21</sup> figures in the annual reports of the Auditor of Puerto Rico for the years 1939, 1940, and 1941, showing (R. 5-6),

“at the closing of the books on June 30, 1939, an excess over disbursements amounting to \$99,510.30; an excess over disbursements amounting to \$1,444,139.20 at the close of the books on June 30, 1940; and an excess over disbursements amounting to \$4,404,557.09, as of June 30, 1941.”

4. The annual budget of the insular government for the fiscal year ending June 30, 1939, totaled \$14,223,510.14 (Budget; Act. No. 324, of May 15, 1938; Laws of 1938, pp. 571, 708). The annual budget for the fiscal year ending June 30, 1940, totaled \$13,929,091.58 (Act No. 184, approved May 15, 1939; Laws of 1939, pp. 923, 1204); and that for the year ending June 30, 1941, totaled \$14,252,544.89 (Annual Budget, Act. No. 173, approved May 15, 1940; Laws of 1940, pp. 1000, 1288).

5. And for the following fiscal year, the one ending June 30, 1942, the annual budget enacted at the same regular annual session of the Legislature at which both of the two amendatory acts to the Income Tax Law, Acts Nos. 31 of April 12, and 159 of May 13, 1941, here in question, were enacted, totaled \$15,612,340.04 (Act No. 179, approved May 14, 1941, Laws of 1941, pp. 1068, 1356), *plus* a supplemental

---

<sup>21</sup> Although the Court could have taken judicial notice of them.

budget (Act No. 180, approved May 14, 1941, Laws of 1941, pp. 1358-1376), containing various items amounting to \$437,034.48, thus making, together with the annual budget above, an aggregate budget for that fiscal year ending June 30, 1942, of \$16,049,374.52,—an aggregate increase over the budget for the preceding fiscal year ending June 30, 1941, above, of only \$1,796,829.63.<sup>22</sup>

### Opinion of the Circuit Court of Appeals.

The Opinion of the Circuit Court of Appeals of April 5, 1944, (R. 52-69; 142 F. (2d) 11), after stating the case, and the principal provisions of the insular statutes involved, deals *seriatim* with the questions presented.

1. It refers to the decisions of this Court upon the taxability of income from community property,<sup>23</sup> earlier decisions of the insular Supreme Court, and Spanish commentators on the Civil Code, and to the rule of this Court

---

<sup>22</sup> As against an accrued surplus or excess of collections over disbursements for the fiscal year 1940-1941, as above, of \$4,404,557.09 (R. 5-6, *supra*), collected under the former Income Tax Law which remained in force during the entire calendar year 1940 and under which the returns for that year were made on March 15, 1941,—together with the property taxes and excise taxes and other sources of revenue, none of which were reduced by the laws of 1941. Indeed, some of the excise taxes were substantially increased (Act No. 158, approved May 13, 1941, Laws of 1941, pp. 948-972; the same day on which Act. No. 159 was approved, the second of the above amendatory acts of the Income Tax Law, here in question).

<sup>23</sup> *United States v. Robbins*, 269 U. S. 315 [1926]; *Poe v. Seaborn*, 282 U. S. 101, 109-118 [1930; with its companion cases, *infra*, p. 68]; together with *Hoeper v. Tax Commission of Wisconsin*, 284 U. S. 206 [1931].

And *confer* also the recent decision of this Court in *Flournoy v. Wiener*, 321 U. S. 253, 254 *et seq.*, declining to review, for lack of jurisdiction on that appeal, the decision of the Louisiana Supreme Court in that case (203 La. 649; 14 So. (2d) 475; June 21, 1943). See also, Article, "Federal Estate Taxation and the Wiener case", by former District Judge George Donworth, in the April, 1944, issue of the Washington [State] Law Review (Vol. XIX, pp. 49-71).

of the respect to be paid to decisions of the insular Supreme Court on questions purely of local law,—and then, with relation to that part of the insular Supreme Court's opinion holding that, although under the law of Puerto Rico the wife's interest in the community property is such that, as the insular Court phrased it (R. 13):

“ \* \* \* ‘we do not doubt in reality that the interest of the wife is something more than a mere expectancy \* \* \*’ (54 P. R. R. 651, 654-655). In the case before us we are not passing on the nature of the wife's rights as a matter of property law in particular situations. It is therefore not necessary for us in a taxation case of this sort to go further than to say that the wife during coverture does not have a vested right. \* \* \* Saying that ‘the interest of the wife is something more than a mere expectancy’ does not go so far as to call the wife's interest a vested one, and that is the only question before us at this time”.

the Circuit Court of Appeals says (R. 62):

“We may reverse a judgment of the Supreme Court of Puerto Rico on a question of local law only if that judgment is ‘inescapably wrong’. \* \* \* ‘Since this is a matter of local law \* \* \*’, we need go no further than to say that the judgment is not inescapably wrong.”<sup>24</sup>

2. The Circuit Court of Appeals then upholds (Opinion R. 64-65) that part of the insular Court's opinion

<sup>24</sup> But this question is not purely one of local law; but is primarily a federal question, of the power of the Legislature under the Organic Act of Congress for Puerto Rico, and under the Fifth Amendment, and the decisions of this Court, to levy an income tax against the husband on the wife's half share in the community property; and whether or not, within the meaning of the decisions of this Court on that subject, any distinction can be made, as to the degree of the wife's ownership in the community property, between its being “*in reality, \* \* \* something more than a mere expectancy*” [the insular Supreme Court's language, above: R. 13], and being “vested” [this Court's phrase, in *Poe v. Seaborn*, 282 U. S. 101, 109-110, and companion cases, cited *infra*, p. 68]

which had held that the requirement of Section 2 of the Organic Act for Puerto Rico, "That the rule of taxation in Puerto Rico shall be uniform" requires only "geographical uniformity" throughout the Island, in the same manner, only, as does the provision of the first clause of Section 8 of Article I of the Constitution which provides that "the Duties, Imposts and Excises shall be uniform *throughout the United States*" [*Italics supplied*]; which this Court decided in *Knowlton v. Moore*, 178 U. S. 41, 84 *et seq.*, requires only geographical uniformity throughout the United States—and not "inherent or intrinsic uniformity". The Circuit Court recognizes (R. 64) that this Court's decision in *Knowlton v. Moore*,

"was based in part on the words 'throughout the United States' which do not appear in the similar provision in the Organic Act";

---

It is believed that no such distinction can properly be said to exist; and that within the meaning of this Court's decisions, the wife's interest in the community property must be considered to be,—for the purposes of the determination of this constitutional question,—either: (1) A "mere expectancy", as the California courts formerly held that it was, under the former statutes of that State (*United States v. Robbins, supra*, 269 U. S. 315 [1926]), now superseded by the later amendment to the California Code; or else (2) Something more than a "mere expectancy",—that is to say, some form of *ownership*; and that *any such ownership* is something "vested" within the meaning of this Court's decisions in *Poe v. Seaborn, supra*, 282 U. S. 101, 109-118; *Goodell v. Koch*, 282 U. S. 118, 120-121; *Hopkins v. Bacon*, 282 U. S. 122, 125-126; *Bender v. Pfaff*, 282 U. S. 127, 130-132; and *United States v. Malcolm, supra*, 282 U. S. 792, 794.

There can be no middle ground. Either the wife's interest is a mere "expectancy", that is to say no ownership at all; or else it is ownership, something "vested".  
[See our discussion, *infra*, pp. 65-71.]

The question is not one of local law; and cannot properly be disposed of by simply treating it as such, and avoiding discussion of the insular Supreme Court's plainly erroneous opinion, on that ground.

but says (*ib.*, R. 64):

“that was merely one ground for the decision<sup>25</sup>”;

and that (R. 64):

“The Supreme Court said, p. 92: “‘But, one of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clause which has since been embodied in so many of the state constitutions, results from a review of the practice under the Constitution from the beginning. From the very first Congress down to the present date, in laying duties, imposts and excises, the rule of inherent uniformity, or, in other words, intrinsically equal and uniform taxes, has been

---

<sup>25</sup> The Circuit Court thus ignores what appears to be the plain fact,—viz., that MR. JUSTICE WHITE’S careful examination of the significance of the presence of those words, “*throughout the United States*” in the Constitutional provision, and of the history leading up to the Constitutional Convention’s including them in it, there in that place in Section 8 of Article I,—indicating their meaning in that connection, particularly in view of their relationship to the kindred provision in Clause 6 of Section 9 of Article I forbidding preferences in favor of the ports of one State over those of another; and his careful pointing out that to treat that Constitutional provision as though it read simply “shall be uniform,” without these additional words, would be wholly to disregard these significant words of the Constitution, “*throughout the United States*”, and to treat them as of no meaning whatever,—*was the very meat of the decision* of this court in *Knowlton v. Moore*, which expressly recognized that the word “uniform”, if standing alone without qualification, would require “intrinsic or inherent uniformity”, as it had been “uniformly” construed to require when so used in State Constitutions;—[and as it was afterwards used by the Congress in Section 2 of the Organic Act for Puerto Rico here in question, which requires, without any qualification whatsoever, “That the rule of taxation in Porto Rico shall be uniform”. [See further, *infra*, pp. 36-57].

disregarded, and the principle of geographical uniformity consistently enforced.<sup>26</sup> ”

The Circuit Court (R. 65) then proceeds, [*plainly erroneously as it is believed*],—to construe its earlier decisions in *San Juan Trading Co. v. Sancho Bonet, Treasurer, supra*, 114 F (2d) 969; *Gallardo v. Puerto Rico Light and Power Co.*, 18 F (2d) 918; and *Domenech v. Havemeyer*, 49 F. (2d) 848, 852, as not in conflict with its present decision in this case.

3. And from that holding that the requirement of Section 2 of the Organic Act that the rule of taxation in Puerto Rico shall be “uniform”, does not extend to requiring inherent or intrinsic uniformity in taxation, but only “geographic uniformity” throughout the Island, it easily followed (R. 66-67) that the Circuit Court likewise followed the opinion of the insular Supreme Court in respect to its holdings that the provisions of the 1941 Acts here in question imposing *double taxation* on dividends from corporations and on

---

<sup>26</sup> The Circuit Court of Appeals, however, in making this quotation from this Court's opinion in *Knowlton v. Moore*, plainly ignored the fact that MR. JUSTICE WHITE was there expressly dealing with the qualifying effect of the significant phrase “throughout the United States”, as having been, as a matter of history, from the very beginning of our Government, recognized as differentiating the meaning of that provision of Clause 1 of Section 8 of Article I of the Constitution concerning “Duties, Imposts and Excises” from what it would have been if it had contained simply the unqualified word “uniform”, and if it had not been qualified by the modifying phrase “throughout United States”.

The point of MR. JUSTICE WHITE's argument, quoted by the Circuit Court of Appeals, is, in reality, plainly *the exact opposite* of the inference which the Circuit Court's opinion seeks to draw from it. So far from minimizing the effect of the qualifying phrase “*throughout the United States*”. MR. JUSTICE WHITE strengthens the effect of the presence of this qualifying phrase in the Constitutional provision, by the historical considerations which he notes, emphasizing the difference, which from the very first, the presence of this qualifying phrase had been considered to make in the Constitutional provision. [See further, our argument on this point, *infra*, pp. 40-42].

profits from partnerships,—as well as imposing the progressive graduated scales of income taxes both for the normal tax and also for the excess or surtaxes,—are all alike within the powers of the Legislature of Puerto Rico.

4. The Circuit Court of Appeals also (R. 65) upholds the insular Supreme Court's holding that notwithstanding the admitted invalidity of the provision of Section 1 of the amendatory Act No. 159 of May 13, 1941, amending Section 12 of the Income Tax Law so as to provide for a higher rate of taxation on the income of a resident alien than on the income of a resident citizen,—plainly violative alike of the "due process" and of the "equal protection" clauses of Section 2 of the Organic Act as well as also of (R. 28-29),

"the more specific *proviso* 'That the rule of taxation in Puerto Rico shall be uniform' ",

nevertheless, the validity of the balance of that Section of this amendatory Act may be sustained by simply *inverting it*, and substituting the [*invalid*] *exception* for the main taxing clause; even though the Circuit Court itself recognizes (R. 66);

"Although with the invalid part separated the statute does not make good grammatical form".

But the Circuit Court says, nevertheless (R. 66):

"it is obvious that the construction by the Court below is what the Legislature would have intended had it foreseen the invalidity<sup>27</sup>".

The Circuit Court also treats this as a question of local law (R. 66), within the meaning of this Court's rule of the respect to be accorded to decisions of the insular Supreme Court upon purely local questions.

---

<sup>27</sup> But this is mere *guessing* on the Circuit Court's part, as it was on the part of the insular Supreme Court; and is in essence an exercise of legislative power, beyond the province of any court. [See *infra*, pp. 72-75].

Petitioner submits, to the contrary, that this is not at all a question of purely local law; but is a question of federal law, as to the powers of the Legislature functioning under the Organic Act of Congress; and is to be decided in accordance with the decisions of this Court as to the scope or extent of the judicial power to uphold the validity of a statute found to be invalid in part.

5. The Circuit Court also upholds (R. 67-68) the insular Supreme Court in its decision that the change made by the last one of the series of amendatory Acts in 1941, Act No. 23 of the Special Session, November 21, 1941, changing the provision of Section 3 of the Income Tax Act so as to make its effective date January 1, 1941, instead of January 1, 1940, did not thereby affect or change in any way the retroactivity of the Act back through 1940, as it had been amended to read by the earlier amendatory Act No. 31, of April 12, 1941. And the Circuit Court of Appeals says that this construction of the Act, by the insular Supreme Court, cannot be said to be "unsupported by logic or reason", and therefore that it is not to be disturbed by the Court of Appeals.

[Petitioner submits, to the contrary, that this part of the insular Supreme Court's decision is "inescapably wrong", and is not purely a question of local law; *infra*, pp. 28-30, 75-78].

6. Finally the Circuit Court of Appeals agrees with that portion of the insular Supreme Court's opinions which had held—(although with some apparent hesitation),—that the tremendously increased taxes laid by these amendatory Acts of 1941, with their double taxation of corporation dividends, and of partnerships, and their novel attribution of the entire income of the conjugal partnership to the husband alone for the purpose of thus astronomically increasing the taxation of husband and wife, living together, though the operation of the high brackets of the progressive normal and surtaxes,—could not be held to be confiscatory; and concluded (R. 69) by affirming the insular Supreme Court's judgment.

### Questions Presented.

**Question 1.** Does the requirement of the 22nd paragraph of Section 2 of the Organic Act of Congress for Puerto Rico (39 Stat. 951, 952), "That the rule of taxation in Porto Rico shall be uniform", require inherent or intrinsic uniformity in local taxation, or does it require only geographical uniformity throughout the Island?

The insular Supreme Court, affirmed by the Circuit Court of Appeals, holds that the requirement is only of geographical uniformity throughout the Island. The Circuit Court of Appeals bases its holding on its understanding of the opinion of this Court in *Knowlton v. Moore*, 178 U. S. 41 (particularly at p. 92) [R. 64].

Petitioner submits, to the contrary, that the lower courts are wrong in this; that this paragraph of Section 2 of the Organic Act should be held to require that the rule of taxation in the Island be *intrinsically* "uniform"; and that the decision of the Court of Appeals is based upon a misinterpretation and misapplication of the opinion and decision of this Court in *Knowlton v. Moore*. [Point I, *infra*, pp. 36-46].

**Question 2.** Does the Legislature of Puerto Rico possess the power to levy graduated income taxes on progressive sliding scales, taxing higher incomes at progressively higher percentage rates; and are the provisions of the Acts of the Legislature of 1941 here in question, levying such taxes, valid?

The answer to this question depends on the answer to Question 1. If the answer to Question 1 is that Section 2 of the Organic Act requires that the rule of taxation be *intrinsically* "uniform" in Puerto Rico, then plainly,—[and we may say, admittedly; no one has questioned it],—the Legislature is without power to levy such progressive taxes on a graduated scale [*Knowlton v. Moore, supra*, 178 U. S. 41, 83-85, 87-88]; since, in the phraseology of Mr. JUSTICE WHITE in that case, such a tax—

“does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions”.

But, on the other hand, if the requirement of Section 2 of the Organic Act is to be construed as being only, as the lower Courts have held it to be, as above indicated, of simple “geographic uniformity throughout the Island,” then apparently the Legislature may possess such power, subject to the requirements of “due process of law” and of “the equal protection of the laws,” of the Fifth Amendment and of the first paragraph of Section 2 of the Organic Act.

Petitioner submits as above indicated, that the holdings of the lower courts on this point are wrong; that the requirement of Section 2 of the Organic Act is of actual intrinsic or inherent uniformity in taxation; and that, therefore, the Legislature is without power to levy income taxes or excess profits taxes at graduated progressive rates; and that it is for the Congress, and not for the courts or the local Legislature, to determine whether or not this restrictive rule of the Organic Act should be changed in any way. [Point II, *infra*, pp. 47-57].

**Question 3. Does the Legislature of Puerto Rico possess the power to levy double taxation upon stockholders of corporations organized or doing business in the Island, by taxing both (a) the income of the corporation, and then also (b) the dividends paid to the stockholders after the corporation has already paid the income tax on its profits before distributing the dividends? And hence are the provisions to that effect, in the 1941 Acts here in question, valid?**

The answer to this question, like the answer to the preceding question, depends on the answer to QUESTION 1. If, as the lower courts have held, the requirement of Section 2 of the Organic Act that the rule of taxation in Puerto Rico shall be “uniform”, is a requirement, only, of “geographic

uniformity throughout the Island," then, apparently, the Legislature of Puerto Rico may in reality possess this arbitrary power of double taxation, and may exercise it in its discretion, as it has chosen to do here.

But if, on the other hand, as petitioner submits, as above indicated, that requirement of section 2 of the Organic Act is really a requirement of *intrinsic or inherent uniformity* in taxation, then it necessarily follows that the Legislature possesses no such arbitrary power of discrimination among taxpayers by such double taxation of stockholders in corporations, and that these provisions of the statutes here in question are beyond its legislative powers and void. [Point III, *infra*, pp. 57-59].

**Question 4. Does the Legislature of Puerto Rico possess the power to levy double taxation on members of partnerships in the Island by taxing both the partnership itself upon its earnings or profits and also afterwards the individual partner upon the share of the profits accruing to him after payment of the partnership tax, as is done by the Acts of 1941 here in question?**

This question is similar to the last; and its answer likewise depends to a great extent [but not wholly] upon the answer to Question 1. For the same reasons indicated with relation to the preceding question, petitioner believes and submits that the lower courts were wrong in upholding the sections of these statutes levying such double taxation on partners; that such discrimination against them is violative of the requirement of the Organic Act of uniformity in taxation, and is therefore beyond the power of the Legislature.

But petitioner also submits that this is an *unreasonable classification unjustly discriminating against* members of partnerships, denying to them due process of law, and the equal protection of the laws; and that these provisions of those Acts are void, for all these reasons. [Point IV, *infra*, pp. 60-64].

**Question 5. Does the Legislature of Puerto Rico possess the power to levy the income tax against the husband alone, living with his wife, upon the entire aggregate income of the conjugal community, and thus, in effect, both: (a) to tax him upon property belonging to his wife and not to him,—viz., upon her share of the community income,—and thus to measure his tax by her income as well as his own, and also in effect (b) to tax her as well as the husband at an increased rate, under the progressive sliding scale putting higher incomes into higher percentage brackets of taxation, than that at which she would have been taxed directly upon her own income if taxed separately upon that; as well as (c) likewise, under the sliding scale, thus also taxing the husband himself at a higher percentage rate?**

Is not this in violation of the requirement of paragraph 22 of Section 2 of the Organic Act of uniformity in taxation, and also a denial of the equal protection of the laws and a taking of property without due process of law,—both from the wife and also from the husband,—in violation of the provisions of paragraph 1 of Section 2 of the Organic Act, and likewise of the Fifth Amendment to the Constitution?

The insular Supreme Court upheld the validity of the sections of the Acts here in question providing for such taxation of the husband on the basis of the entire conjugal community income. The Circuit Court of Appeals declined to disturb the decision of the insular Court on this point, considering it a decision on a question purely of local law, and not “inescapably wrong”.

Petitioner submits: (1) That the insular Court’s decision on this point was in reality “inescapably wrong”; and (2) That the question is not purely one of local law, and should not have been so disposed of by the Circuit Court of Appeals; that it is a question of federal law, of the power of the insular Legislature under the Organic Act and particularly under the restrictions contained

in paragraphs 1 and 22 of Section 2 of that Act of "due process of law", of "the equal protection of the laws", and of uniformity in taxation, and under the due process of law requirement of the Fifth Amendment; and that in view of those requirements, and of the community property laws of Puerto Rico as they have been recognized and interpreted by the insular Supreme Court itself, as constituting "*the conjugal partnership \* \* \* in an identical or similar form to that*" existing in the community law States of the Union, and as giving to the wife "something more than a mere expectancy" in the community property,—and in view of the decisions of this Court in *Poe v. Seaborn*, 282 U. S. 101, and its companion cases, and in *Hoeper v. Tax Commission of Wisconsin*, 284 U. S. 206,—the Legislature of Puerto Rico is without any power,—[in the absence of any direct amendment of the community property laws],—so to levy an income tax against the husband alone, based on the entire aggregate conjugal community income; and that those provisions of the statutes here in question attempting so to levy such a tax, consequently, void: [Point V. pp. 64-72].

**Question 6.** Does not the admitted invalidity of the exception contained in Section 12(a) of the Income Tax Act, as amended by Act No. 159 of May 13, 1941, one of the statutes here in question, discriminating in favor of American citizens residing in Puerto Rico as against resident aliens, invalidate that entire Section amending the rates of the normal income tax?

The insular Supreme Court found this discriminatory exception void; but upheld the validity of the balance of the Section as a whole, *by transforming the invalid exception into the main clause of the Section*, so as in effect to make the Section read as though the discriminatory rate in favor of American citizens stated in the exception had been the rate originally enacted by the Legislature as the general rule, and as though there never had been any such exception,

thus *guessing* that that is what the Legislature would have done if it had realized the invalidity of the exception.

The Circuit Court of Appeals affirmed; partly on the ground that this was a decision by the local Court on a question of local law, and not "inescapably wrong."

Petitioner submits that this is not a question of purely local law; but is a question of federal constitutional law, of the construction of an Act of the Legislature acting under the authority of an Act of Congress, the Organic Act for the Island, in the exercise of powers thus delegated to it by the Congress as its agent; and that the decisions of both the lower courts on this point are plainly wrong, and contrary to the decisions of this Court, particularly this Court's decisions in *Sprague v. Thompson*, 118 U. S. 90, 95; *Pollock v. Farmers Loan & Trust Co.*, 158 U. S. 601, 635-636; *Hill v. Wallace*, 259 U. S. 44, 71; *Dorchy v. Kansas*, 264 U. S. 286, 290; and *Williams v. Standard Oil Co.*, 278 U. S. 235, 241-242. [Point VI, pp. 72-75].

**Question 7.** Did not the later amendment to **Section 3** of the **Income Tax Act**, by the **November 21, 1941, Act No. 23** of the **Special Session**, so as to make the **Act** retroactive only to **January 1, 1941**, instead of back to **January 1, 1940**, as it had been made by the amendment to **Section 3** made by the earlier amendatory **Act No. 31** at the **Regular Session**, approved on **April 12th** of that year [not changed by the **Act of May 13th**], have the effect of amending the original **Income Tax Act** of 1925, of which the **November 21 Act** was declared by its terms to be an amendment, so as to supersede the earlier amendatory **Act of April 12** in that respect, and thereby again to change the retroactivity of the **Act** so as to make it retroactive only back to the beginning of the calendar year 1941, as provided by the **November Act**, instead of further back through the calendar year of 1940, as had been provided by the **April 12th** amendment?

And thereby to relieve this petitioner of the retroactive liability for additional income taxes for the

year 1940 charged against him by the Treasurer's "reliquidation" of his taxes under the April 12th amendment,—[although he had already paid the tax for that year 1940, in full on March 15, 1941, before the enactment of the April 12th amendment, and in strict accordance with the laws in force during the year 1940 and up to the time when he made his tax return and paid his tax on March 15, 1941]?

The insular Supreme Court answers this question in the negative, holding that the November Act's further amendment of Section 3 did not affect the retroactivity back through 1940 provided by the April 12th amendment.

The Circuit Court of Appeals affirmed, saying that the construction by the Puerto Rican Court cannot be said to be "unsupported by logic or reason".

The provision in the November amendatory Act reads (Laws of Puerto Rico, Special Session 1941, p: 74; R. 61):

*"Be it enacted, etc.*

"Section 1.—Subdivision (a) of Section 3 of Act No. 74, entitled \* \* \*, approved August 6, 1925, as amended by Act No. 18 of June 3, 1927, Act No. 30 of April 26, 1932, Act No. \* \* \*, Act No. 31 of April 12, 1941, and Act No. 159 of May 13, 1941, is hereby amended as follows:

"Section 3.—(a) The term "taxable year" means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 or 30. \* \* \*. The first taxable year, for the purposes of this Act, shall be the calendar year 1941, or any fiscal year ending during the calendar year 1941."

The argument of the Circuit Court of Appeals is that (R. 68):

"Where Sections 1 and 11 say: 'The first taxable year, for the purposes of this Act [the November Act], shall be the calendar year 1941 \* \* \* and \* \* \* *this Act shall take effect from and after January 1, 1941,*' (italics added)" [by the Circuit Court] "the words

‘this Act’ may well refer only to the present amending Act itself and not to the Act amended by it.”

Petitioner submits that both of the lower courts are clearly wrong in this respect; that this not a question of local law, but of federal law, of the construction of a statute of the Legislature acting under the Organic Act of Congress and as an agent of the Congress; that the last above quoted argument of the Circuit Court of Appeals appears to be directly in conflict with the decision of this Court in *Posadas, Collector v. National City Bank*, 296 U. S. 497, 503-506; and that here the provisions of the November Act, amending Section 3 of the original Act of 1925, were clearly intended by the Legislature as amendments of the original Act, to speak as from the date of the original Act, and to be a substitute for the earlier amendments (including the one of April 12, 1941) in that respect, and to make the original Act read as retroactive only to the beginning of the 1941 calendar year. [Point VII, *infra*, pp. 75-78].

**Question 8. Were not the amendments made in the Income Tax Laws of Puerto Rico by these amendatory Acts of April 12 and May 13, 1941, here in question, considered as a whole, confiscatory, amounting really to an attempt to tax for assumed “general welfare” purposes, rather than to taxation for usual governmental purposes; and beyond the ordinary purposes contemplated in the taxing powers delegated by the Congress to the Legislature by Section 3 of the Organic Act for Puerto Rico?**

The insular Supreme Court recognized and discussed somewhat at length the seriousness of the question here involved; and, although upholding these statutes against that charge, the insular Court appears nevertheless to have done so with some hesitation, saying (R. 39):

“Lest we be misunderstood we add that we do not hold nor do we intimate that there is no limit beyond which income taxation cannot go. We hold only that this is a question of degree, and that, under all the re-

cited circumstances, the case before us does not fall on the wrong side of the line."

The Circuit Court of Appeals brushed this question lightly aside (R. 69).

The petitioner believes and submits that these very radical tax amendments do actually, in the phraseology of the insular Court, "fall on the wrong side of the line"; that they are an attempt to exercise the power of Congress to tax to promote the "general welfare",—not delegated to the Legislature. [Point VIII, *infra*. pp. 78-82.]

### **Petitioner's Position, and Errors to be Urged.**

These have been indicated in stating each of the foregoing "Questions Presented" (*ante*, pp. 23-31).

### **Reasons for Granting the Writ.**

1. This case presents important questions of federal law which have not been, and it is believed should be, directly decided by this Court.

2. *The first* is whether the unqualified word "uniform", standing alone, as used by the Congress in its requirement in the 22nd paragraph of Section 2 of the Organic Act for Puerto Rico of March 2, 1917 (39 Stat. 951, 952),

"That the rule of taxation in Porto Rico shall be uniform",

requires inherent or intrinsic uniformity in taxation in Puerto Rico; or only geographic uniformity throughout the Island.

3. *The second* is whether or not the legislature of Puerto Rico, under the powers delegated to it by the Congress by the Organic Act, and the restrictions contained in that Act upon its delegated powers, particularly the requirements of the first paragraph of Section 2, of "due process of law",

and of "the equal protection of the laws", with that of the 22nd paragraph, above quoted, that the rule of taxation in Puerto Rico shall be "uniform",—and of the Fifth Amendment to the Constitution,— and in view of the community property laws in force in Puerto Rico [and without specifically amending them],—possesses the power, in its discretion, to levy income taxes against the husband alone, calculated upon the entire aggregate amount of the conjugal community income of husband and wife.

4. The Supreme Court of Puerto Rico has said, in construing a tax statute (*Casal v. Sancho Bonet, Treasurer, supra*, 53 P. R. Rep. 609, 618):

"However, as the law involved is a tax statute which must be construed in the sense most favorable to the taxpayer, we are inclined to hold that the rule adopted *in the States of the Union where the conjugal partnership also exists in an identical or similar form to that recognized in this jurisdiction* is applicable to Puerto Rico" (Italics supplied);

and, in a later case, on rehearing (*National City Bank v. De la Torre*, 54 P. R. Rep. 651, 654-655):

"Given the changes that have occurred in the institution in Puerto Rico, similar to those of California, we do not doubt in reality that the interest of the wife is something more than a mere expectancy and that it can be said that here, as well as in California, her interest in the property of the conjugal partnership is greater than that of a presumptive heir."

But in the present case the insular Supreme Court, called upon directly to face the question of the power of the Legislature, in view of this Court's decisions<sup>28</sup> in cases coming from various "community law" States of the Union, avoided the issue by saying (R. 13):

<sup>28</sup> *Ante*, foot-notes 16, 23, 24, and *infra* 42 and 43; pp. 10-11, 16, 17-18, and 68.

“Just how close to a vested right she” [the wife] “may have in particular situations, we may well leave for the future. Saying that ‘the interest of the wife is something more than a mere expectancy’ does not go so far as to call the wife’s interest a vested one, and that is the only question before us at this time;”

and therefore found,

“no escape” (R. 14) “from the doctrine laid down in *United States v. Robbins*, 269 U. S. 315,”

and upheld the statute here involved on that ground.

In thus discussing “a vested right”, the insular Court was clearly referring to this Court’s opinions in *Poe v. Seaborn*, *supra*, 282 U. S. 101, 110-113, and its companion cases, where that term was used as indicating some definite ownership in the wife, in contra-distinction to the “mere expectancy” dealt with in *United States v. Robbins*, *supra*, 269 U. S. 315, 327.)

Petitioner believes that this exhibits a complete misunderstanding of this Court’s decisions, and a misapplication of them by the insular Court.

The Circuit Court of Appeals, erroneously treating the question as one of local law (R. 62), said simply: “we need go no further than to say the judgment below is not inescapably wrong”, on this point.

5. Upon the decision of the *first question* above there depend in this case the further determinations of whether the Legislature of Puerto Rico possesses the powers: (1) To levy income taxes, surtaxes as well as normal taxes, on sliding scales, *at progressive rates*, at higher percentages upon higher incomes, progressively; (2) To lay double taxation on stockholders of corporations upon corporate dividends; and likewise (3) To levy double taxation upon partners, on partnership profits.

6. Aside from all other questions here, basically the underlying important questions are the foregoing of the

powers of the Legislature of Puerto Rico; and of the validity of the radical and far reaching amendments to the Income Tax Laws made by these amendatory Acts of 1941; and also of the power of the Legislature,—under the limited taxing powers delegated to it by the Congress by Section 3 of the Organic Act,—to levy taxes for assumed “general welfare” purposes, beyond usual governmental needs,—and taxes of such a manifestly arbitrary, unnecessary, and confiscatory character as those sought to be provided by the amendatory statutes of 1941 here in question.

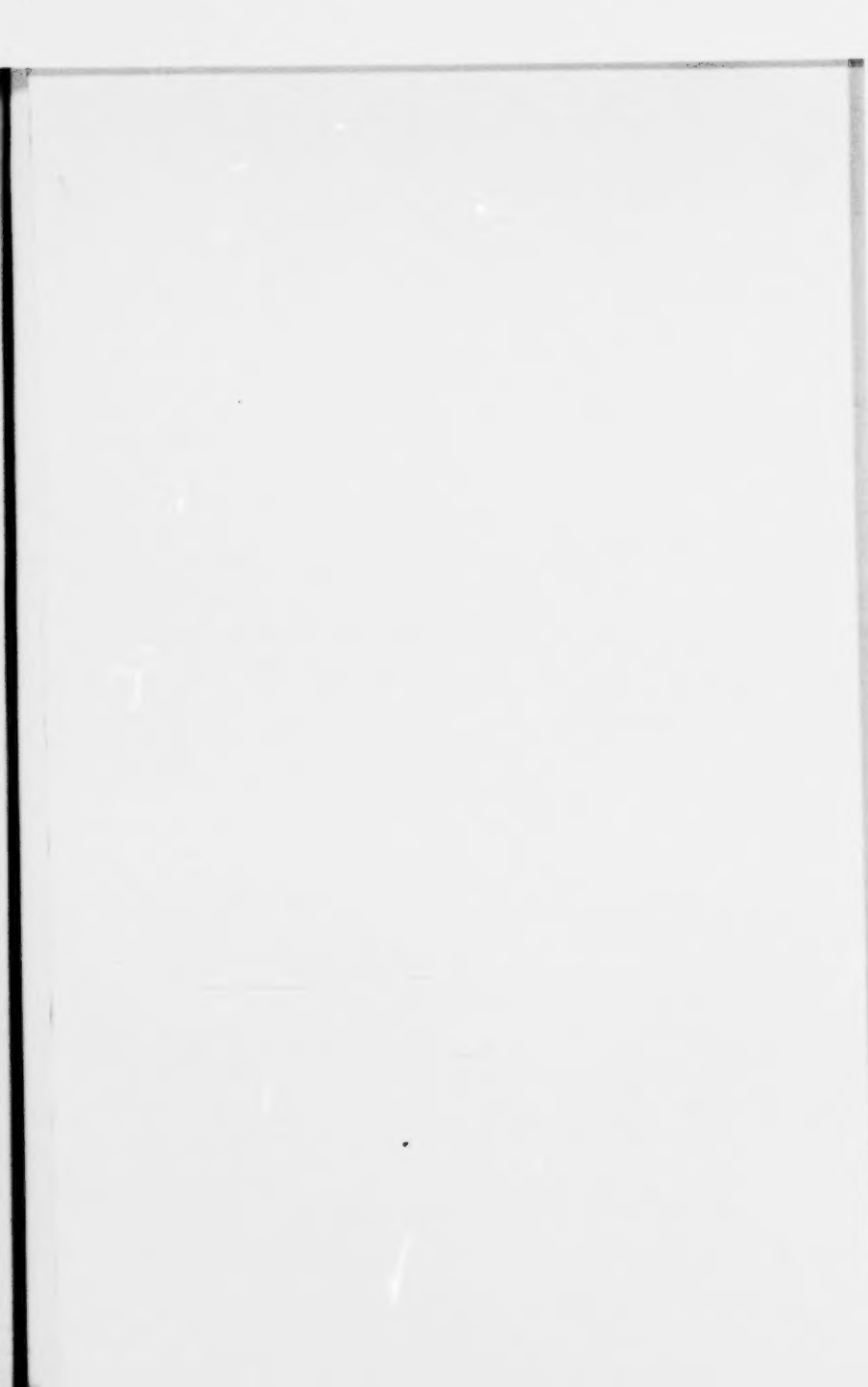
There are also the not unimportant questions of the construction of the November, 1941, amendment limiting the retroactivity of the Income Tax Act to the calendar year 1941, as above indicated; and of the effect on the validity of the entire Section 12(a) as amended by the Act of May 13, 1941, changing the rates of the normal tax, of striking down the admittedly invalid exception discriminating in favor of American citizens.

7. The decisions of the lower courts on all these questions are in conflict with the applicable decisions of this Court and of the State Courts, and are wrong. They should be reviewed by this Court, and reversed; and the insular Treasurer’s “reliquidation” of petitioner’s 1940 income tax should be vacated.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari be granted.

WILLIAM CATTRON RIGBY,  
OSCAR SOUFFRONT,  
J. J. ORTIZ ALIBRAN,  
*Attorneys for Petitioner.*

RIGBY, LEON AND WEILL,  
FRED W. LLEWELLYN,  
*Of Counsel.*





## BRIEF IN SUPPORT OF PETITION.

### Opinions Below.

The opinion of the Tax Court of Puerto Rico is not officially reported. The opinion of the Supreme Court of Puerto Rico, March 9, 1943, upon which judgment was entered the same day (R. 39-40), appears in the Advance Sheets of Volume 61 of the Spanish Edition of the Reports of that Court [61 *Decisiones de Puerto Rico*, pp. 474-512; Advance Sheets of May 1, 1943], but has not yet appeared in the English Edition of the Puerto Rico Reports. An English translation is in the "Agreed Statement of the Case" here (R. 8-39).

The earlier opinion of the insular Supreme Court of Puerto Rico in this case, upon certiorari to the Court of Tax Appeals [which had dismissed this petitioner's appeal to it from the insular Treasurer, for supposed lack of jurisdiction in the Court of Tax Appeals], remanding the case to that Court for a hearing on the merits, July 23, 1942, appears in the Advance Sheets of the Spanish Edition, in the issue of October 1, 1942,—60 *Decisiones de Puerto Rico*, pp. 768-783; but not yet in the English Edition.

The opinion of the Circuit Court of Appeals (R. 52-69) appears in 142 F. (2d) 11 (Advance Sheets).

### Jurisdiction.

As stated in the Petition (*ante*, p. 2), the jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on April 5, 1944.

### Questions Presented.

The questions here presented are stated in the Petition "Questions Presented," (*ante*, pp. 23-31).

### Statutes.

These are indicated in the Petition (*ante*, pp. 2-6), and pertinent parts are set out in the Appendix (*infra*, pp. 83-101).

### Statement of the Case.

A statement of the case, with summaries of the opinions of the insular Supreme Court and the Circuit Court of Appeals, is in the Petition (*ante*, pp. 7-22).

### Specification of Errors to be Urged.

These are indicated under the headings "Questions Presented" and "Reasons for Granting the Writ," in the Petition, *ante*, pp. 23-31, and 31-34).

### Summary of Argument.

The argument is summarized under the headings "Questions Presented" and "Reasons for Granting the Writ" in the petition (*ante*, pp. 23-31 and 31-34), and in the "Subject Index" preceding the Petition.

## ARGUMENT.

### Point I.

3. The provision of Section 2 of the Organic Act, that:

"The rule of taxation in Porto Rico shall be uniform," requires inherent or intrinsic uniformity; not merely geographic uniformity "throughout the Island."

A. To treat it as requiring "geographical uniformity" only, would be to deprive it of any separate meaning at all, and as adding nothing to the requirements of "due process" and of "equal protection of the laws," contained in the first paragraph of the same Section.

B. Both the insular Supreme Court and the Circuit Court of Appeals were plainly in error in holding that merely "geographic uniformity" throughout the Island

is required; and, specifically, the Circuit Court of Appeals, in so holding, misapprehended and misapplied the decision of this Court in *Knowlton v. Moore*, 178 U. S. 41, 83 *et seq.* This decision of the lower courts is directly in conflict with the decision of this Court in that case.

Examination of the entire opinion of this Court in that leading case of *Knowlton v. Moore*, *supra*, 178 U. S. 41, taking it "by the four corners," shows that, so far from supporting the Circuit Court of Appeals' conclusion here, it is, in reality, directly against it, and directly, and conclusively, supports our position here.

Its reasoning clearly shows that it was the intent of the Congress in requiring by the clause of Section 2 of the Organic Act above quoted that the rule of taxation in Puerto Rico shall be "*uniform*",—without adding any qualifying phrase, such as, "throughout the Island",—to make the requirement *absolute*, without qualification, that is to say that the rule should apply, broadly, to the persons taxed and the objects of taxation, as well as to the geographical jurisdiction of the local government. In other words, that the word "*uniform*" was intended by the Congress to mean and to include both "*inherent uniformity*," and also "*geographical uniformity*".

Very clearly this Court's decision in *Knowlton v. Moore* that the provision of the Constitution,—Article I, Section 8, Clause 1,

"but all Duties, Imposts and Excises shall be uniform throughout the United States",

requires only geographical uniformity "throughout the United States", and does not require "*inherent and intrinsic uniformity*",—that is, that the Constitutional requirement does not relate "to the inherent and intrinsic character of the tax",—is expressly placed by the opinion of Mr. JUSTICE WHITE, speaking for the Court, on the very ground of the inclusion of the words "*throughout the United States*" in the clause, as well as upon the ~~history~~ history of that

particular phraseology, and its relationship to the other provisions in the Constitution, particularly to the provision forbidding any preference being given between the ports of different States (Article I, Section 9, Clause 6). This Court says (*Knoulton v. Moore, supra*, 178 U. S. 41, 84, 87 *et seq.*):

“The contention is that because the statute exempts legacies and distributive shares in personal property below \$10,000, because it classifies the rate of tax according to the relationship or absence of the relationship of the taker to the deceased, and provides for a rate progressing by the amount of the legacy or share, therefore the tax is repugnant to that portion of the first Clause of Section 8 of Article I of the Constitution, which provides ‘the Duties, Imposts and Excises shall be uniform throughout the United States’.

“The argument to the contrary, *whilst conceding that the tax devised by the statute does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions*, asserts that it does not thereby follow that the taxes in question are repugnant to the Constitution of the United States, since the provision in the Constitution, that ‘duties, impost and excises shall be uniform throughout the United States,’ it is insisted has a different meaning from the expression equal and uniform, found in State constitutions. In order to decide these respective contentions it becomes at the outset necessary to accurately define the theories upon which they rest.

“On the one side, the proposition is that the command that duties, impost and excises shall be uniform throughout the United States relates to the inherent and intrinsic character of the tax; that it contemplates the operation of the tax upon the property of the individual taxpayer, and exacts that when an impost, duty or excise is levied, it shall operate precisely in the same manner upon all individuals; that is to say, the proposition is that ‘uniform throughout the United States’ commands that excise, duties and impost, when levied, shall be equal and uniform in their operation upon persons and property in the sense of the meaning of the words equal and uniform, as now found in the

constitutions of most of the States of the Union. The contrary construction is this: That the words 'uniform throughout the United States' do not relate to the inherent character of the tax as respects its operation on individuals, but simply require that whatever plan or method Congress adopts for laying the tax in question, the same plan and the same method must be made operative throughout the United States; that is to say, that wherever a subject is taxed anywhere, the same must be taxed everywhere throughout the United States, and at the same rate. The two contentions then may be summarized by saying that the one asserts that the Constitution prohibits the levy of any duty, impost or excise which is not intrinsically equal and uniform in its operation upon individuals, and the other that the power of Congress in levying the taxes in question is by the terms of the Constitution restrained only by the requirement that such taxes be geographically uniform." (pp. 83-85; *Italics supplied*) \* \* \*

"\* \* \* It is apparent that the controversy cannot be disposed of by a mere reference to prior adjudications, since reliance is, by both sides, in effect, placed upon the same decisions. But to determine which view of the cited authorities is the correct one, it will become necessary not only to analyze the facts which were at issue in the decided cases, but also to elucidate the language of the opinions which have given rise to the conflicting constructions now placed upon such language, by an examination of the subjects to which the language related. As to do this calls for a critical consideration of the provisions of the Constitution referred to in the opinions relied on, we shall, for the moment, put the cases referred to out of mind, and consider the controversy presented as one of original impression. We are, moreover, impelled to this course from the fact that *as the word 'uniform', or the words 'equal and uniform', are now generally found in State constitutions, and as there contained have been with practical unanimity interpreted by State courts as applying to the intrinsic nature of the tax and its operation upon individuals*, if it be that the words 'uniform throughout the United States,' as contained in the Constitution of the United States, have a different significance, the reason for such conclusion should be carefully and accurately stated."

“Considering the text, it is apparent that if the word ‘uniform’ means ‘equal and uniform’ in the sense now asserted by the opponents of the tax, the words ‘throughout the United States’ are deprived of all real significance, and sustaining the contention must hence lead to a disregard of the elementary canon of construction which requires that effect be given to each word of the Constitution.”

“Taking a wider view, it is to be remembered that the power to tax contained in section 8 of article 1 is to lay and collect ‘taxes, duties, imposts and excises. . . . But all duties, imposts and excises shall be uniform throughout the United States.’ Thus, the qualification of uniformity is imposed, not upon all taxes which the Constitution authorizes, but only on duties, imposts and excises. The conclusion that inherent equality and uniformity is contemplated involves, therefore, the proposition that the rule of intrinsic uniformity is applied by the Constitution to taxation by means of duties, imposts and excises, and it is not applicable to any other form of taxes.” (pp. 87-88; *Italics supplied*)

The Court then, pursuant to the purpose indicated in the paragraph on page 92 of the opinion, upon which,—lifted from its context,—the Circuit Court of Appeals here relies [*ante*, p. 19], proceeds to examine the history of this Constitutional provision, in the Constitutional Convention, and with relation to the laws of England and of the various Colonies before that time, and the relation of this provision to the one in Clause 6 of Section 9 of Article I that

“No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.”;

and concludes (178 U. S., *supra*, at p. 98):

“Thus it is apparent that the expression ‘*uniform throughout the United States*’ was at that time considered as purely geographical, as being synonymous with the expression ‘general operation throughout the

United States,' and that no thought of restricting Congress to intrinsic uniformity obtained, since the powers recommended were absolutely in conflict with such theory" (*Italics supplied*);

and that (pp. 105-106)

"Thus it came to pass that although the provisions as to preference between ports and that regarding uniformity of duties, imposts and excises were one in purpose, one in their adoption, they became separated only in arranging the Constitution for the purpose of style. The first now stands in the Constitution as a part of the

sixth clause of section 7 of article 1, and the other is a part of the first clause of section 8 of article 1. By the result then of an analysis of the history of the adoption of the Constitution it becomes plain that the words 'uniform throughout the United States' do not signify an intrinsic but simply a geographical uniformity."

C. For the purposes of the present case the notable things about that opinion in *Knowlton v. Moore* are (1) that the reasons for holding that Constitutional provision of Clause 1 Section 8 of Article I, that all duties, imposts and excises shall be "uniform throughout the United States" requires "geographical uniformity" only, and not "inherent" or "intrinsic" uniformity, were primarily three-fold; (a) the presence of the words "*throughout the United States*", to which it was to be presumed that the framers of the Constitution had intended a meaning should attach and that those words should not be disregarded; (b) the history of the Clause and of the phrase "throughout the United States" in the Constitutional Convention; and (c) its connection with the parallel clause in paragraph 6 of Section 9 of Article I prohibiting preferences among the ports of the different States,—all of these things together tending strongly to show that it was only geographical uniformity that the framers of the Constitution had in mind; and (2) that,—equally noteworthy,—the opinion shows that this Court clearly understood, and directly stated,—(in the

portions of the opinion which we have italicized in the foregoing quotation,—*ante*, pp. 38, 39):

“the word ‘uniform’ or the words ‘equal and uniform’ are now generally found in state constitutions, and as there contained have been with practical unanimity interpreted by state courts as applying to the intrinsic nature of the tax and its operation upon individuals” (178 U. S., *supra*, pp. 84, 87).

That decision was handed down May 14, 1900. It has stood unchallenged ever since.

D. Seventeen years later, on March 2, 1917, the Organic Act of Congress for Puerto Rico was approved, containing the provision in its Section 2 (39 Stat. 951, 952):

“That the rule of taxation in Porto Rico shall be *uniform*.” (*Italics supplied*)

That is,—“uniform”; without any modification or qualification whatsoever. Not “uniform throughout the Island”; nor any other modification or limitation. Plainly, the Congress must be presumed, in using that phraseology, to have done so in view of the decision of the United States Supreme Court in *Knowlton v. Moore*; and with MR. JUSTICE WHITE’S language in that opinion in mind.

The Circuit Court of Appeals itself, in its opinion here (R. 65) emphasizes the rule of this presumption, quoting from this Court’s opinion in *Kepner v. United States*, 195 U. S. 100, 124 [1904], and citing also *Serra v. Mortiga*, 204 U. S. 470, 474, that “The guarantees which Congress has extended to Puerto Rico are to be interpreted as meaning what like provisions meant *at the time when Congress made them applicable to Puerto Rico*.” (*Italics supplied*.)

E. In other words, in using that single, unqualified, word “uniform”, the Congress must be presumed to have intended to use it in the same sense in which Mr. Justice White had said in *Knowlton v. Moore* that word had come to be “with practical unanimity” interpreted by State courts

"as applying to the intrinsic nature of the tax and its operation upon individuals"; and, therefore, to have intended to adopt that interpretation and to use that word in the Organic Act with that meaning.

This is the rule recognized, as a matter of course, as the true interpretation to be placed upon the word "uniform" as used in their State constitutions by the Supreme Courts of Alabama, Illinois, Pennsylvania, Tennessee and Washington in the cases we have cited above [*infra*, p. 50], as well as in other States, where "with unanimity" as MR. JUSTICE WHITE phrased it in *Knowlton v. Moore*, *supra*, it is construed to mean "inherent" or "intrinsic" uniformity.

F. It has always heretofore been so construed in Puerto Rico,—apparently without question, until the decision of the insular Supreme Court in the present case.

It was so treated by the Circuit Court of Appeals itself [*as we respectfully submit, despite that Court's present interpretation of the Domenech opinion, in its opinion in this case*; R. 81], in *Domenech, Treasurer v. Havemeyer*, 49 F. (2d) 849, 852, where that Court's decision striking down a particularly flagrant violation was necessarily based upon that Court's understanding that, of course, the requirement that the rule of taxation in Puerto Rico shall be "uniform" necessarily implied the requirement of intrinsic or inherent uniformity.

That was followed by the decision of the insular Supreme Court itself in *Loiza Sugar Company v. Domenech, Treasurer*, 43 P. R. Rep., 855, 857-858, necessarily involving the same understanding.

And the Circuit Court's earlier decisions in *Gallardo v. Porto Rico Ry. Light and Power Co.*, 18 F. (2d) 918, 923, "(10)", and in *Sanchez Morales & Co. v. Gallardo*, 18 F. (2d) 550, 551-552, noted below [*infra*, pp. 54-57], necessarily, we submit, involved the same understanding.

Nor is there anything to the contrary in the decision of the Circuit Court, upon which both of the lower courts now rely, in *San Juan Trading Co. v. Sancho Bonet, Treasurer*, 114 F. (2d) 969, 972, where the Circuit Court, *arguendo*, simply recognized that the statute there before it fully complied with the requirement of *uniformity* in both aspects, that (a) it applied "equally in all parts of Puerto Rico"; and that (b) it also met the requirement of inherent or intrinsic uniformity, in that "all matches in each class are treated the same."

*The insular Supreme Court itself*, in the present case, places that part of its decision striking down the discrimination against alien residents of Puerto Rico, in the *excepting clause* of Section 12(a) as amended by the Act of May 13, 1941, upon the very ground that it "violates not only the equal protection provision of our Organic Act \* \* \*, but also the more specific proviso that the rule of taxation in Puerto Rico shall be uniform." (R. 28-29.) [Inconsistently enough; perhaps from the pure force of habitual thinking of the uniformity clause as inherently applicable to all taxation in the Island.]

## Point II.

**The Legislature of Puerto Rico is without authority to levy income taxes upon a progressive graduated scale imposing higher percentages upon higher incomes, because the Legislature is bound by the iron rule which the Congress has seen fit to impose upon it by Section 2 of the Organic Act, "That the rule of taxation in Puerto Rico shall be uniform."**

A. As pointed out by MR. JUSTICE WHITE, in *Knowlton v. Moore, supra*, wherever the word "uniform," without further qualification, is used in State constitutions, that word, and the equivalent phrase "equal and uniform," "now generally found in State constitutions,"

"as there contained have been *with practical unanimity interpreted* by state courts as *applying to the intrinsic nature of the tax and its operation upon individuals*". (*Italics supplied*)

B. *The decision in Knowlton v. Moore*, that the Congress is not bound by the rule of inherent or intrinsic uniformity, and may therefore levy progressive taxes [upon legacies in *Knowlton v. Moore*, and upon income taxes in the later following case of *Brushaber v. Union Pacific Railroad Co.*, 240 U. S. 1, 25], for the reason that the Constitutional provision in Article I, Section 8, Clause 1, requires only geographical uniformity, *is bottomed upon the presence in that clause of the significant words "throughout the United States,"* and upon the history of the clause as it is traced in the opinion in that case as above quoted.

MR. JUSTICE WHITE noted that *the government's argument* in that case, in support of the power of the Congress to levy progressive taxes, on the ground that the Constitutional provision requires only geographical uniformity, *expressly conceded* that if the contrary interpretation of that clause were to be adopted, and it were to be held that the word "uniform" as there used were to be given the same construction given it "with practical unanimity" whenever used in State constitutions, to include "inherent" or "intrinsic" uniformity, then, as MR. JUSTICE WHITE there said (178 U. S., *supra*, at p. 84; *ante*, p. 38), the progressive

"tax devised by the statute does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions."

*That is conclusive here*, of the total lack of power of the Legislature of Puerto Rico to levy progressive taxes; just as it is (*infra*, Points III and IV) of its like lack of power to lay double taxation on corporate stockholders, and

on partners, in view of the use of the absolute and unqualified word "uniform," in the Organic Act.

That is not only the rule which, as MR. JUSTICE WHITE said in *Knowlton v. Moore*, has been "with practical unanimity" (*ante*, p. 39) applied by the State courts in interpreting the word "uniform" in State constitutions, but it is also the rule which has been specifically applied, among other cases, in those below cited by us from various State courts (*infra*, p. 50).

And, of course, as expressly held in the decisions of the various State courts below cited, and as was expressly conceded in the Government's argument in *Knowlton v. Moore*, that requirement of "intrinsic" or "inherent" uniformity forbids the local Legislature from levying progressive taxes.

The local Legislature of Puerto Rico does not possess the same power as the Congress in that respect. The Congress has chosen not to delegate that power to it; but, on the contrary, to limit its powers in this respect by this unqualified requirement of "uniformity" in Section 2 of the Organic Act.

C. It is, of course, immaterial that progressive rates were not first introduced into this statute by these 1941 amendments, but,—*at lower rates*,—had been contained in the Act ever since its original enactment in 1925 (Laws of 1925, pp. 428-432).

The question here is a question of the extent of the power delegated to the Legislature by the Act of Congress. That power is not enlarged,—nor the lack of power supplied,—by the fact that taxpayers may not have heretofore assailed the Act in its earlier form, with its more moderate rates.

D. It is wholly immaterial here that the Congress itself, under the broad powers given it by the Sixteenth Amendment, levies federal income taxes, surtaxes or excess profits taxes, and special taxes of various kinds, upon graduated progressive scales, taking higher incomes habitually at higher percentage rates than lower incomes. The Congress is not bound by any such iron rule of uniformity in income taxation, as it has seen fit to impose upon its creature, the Legislature of Puerto Rico, by the Organic Act, for all insular taxation of every kind.

The power given to the Congress by the Sixteenth Amendment to levy federal income taxes, is of the broadest character. The Amendment says:

“The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

The only restriction to be implied upon this broad grant of power, is that of “due process of law” guaranteed by the Fifth Amendment.

Under that broad grant, the Congress, driven by imperative war requirements, has levied income taxation at increasingly higher rates on the higher incomes.

But nevertheless the Congress, when, in 1917, by the War Revenue Act of that year (Sec. 5, Act of October 3, 1917, 40 Stat. 300, 302), it invested the Legislature of Puerto Rico (and that of the Philippines) with the

“power by due enactment to amend, alter, modify or repeal the income tax laws in force in Puerto Rico or the Philippine Islands respectively”,

did not choose to withdraw or to modify in any manner the limitation which it had imposed, six months earlier, on the Legislature of Puerto Rico, by the Section 2 of the Organic Act, approved March 2, 1917 (39 Stat. 951, 952, *supra*), "That the rule of taxation in Puerto Rico shall be uniform".

E. This is the more noteworthy, because this grant of power to the Puerto Rico Legislature to levy income taxes, thus independently within the Island, was made as a part of the very same War Revenue Act by which the Congress, in the immediately following sections of that statute, proceeded to levy the "War Excess Profit Tax", with progressively rising graduated taxes on incomes within the mainland, for the purposes of World War I then in progress.

Manifestly the purpose of the Congress was that the people of Puerto Rico should neither be subjected to such war taxation, nor be called upon thus to bear the costs of carrying on the war; but that, on the contrary, taxation in Puerto Rico should continue to be levied by the Legislature solely for local government purposes as specified in Section 3 of the Organic Act; and that, therefore, the limitation of uniformity in taxation prescribed by Section 2 of that Act should remain the rule in the Islands. That has never been changed.

The very fact of the emphasis which the courts have placed on the broad, almost unlimited, power of the Congress itself under the Sixteenth Amendment [*confer*, e.g., *Union Packing Co. v. Rogan*, 17 F. Supp. 934], points up and illustrates, rather than otherwise, the contrary effect of the limitation of the rule of uniformity in taxation which it has chosen to impose upon its delegate, the Legislature of Puerto Rico, for local purposes in the Island.

Many of the States in the Union having State constitutions under which their State Legislatures are not limited

to the rule of uniformity in taxation, but under which, on the contrary, the Legislature possesses broad, unlimited powers in this respect, as does the federal Congress, have followed the example of the Congress in imposing graduated income taxes, taxing higher incomes with progressively larger percentages.

**F. But there are some other States, whose State constitutions do include a clause, or limitation, imposing upon the Legislature the requirement of uniformity in taxation.**

In some of those States the question has arisen as to the power of the Legislative, in view of that limitation, to levy such progressive graduated income taxes. In some of those States the limitation of uniformity is imposed only with reference to property taxes, and not upon excise taxes; and hence, in some of them, a discussion has arisen in the courts as to whether the income tax is to be considered a "property tax,"<sup>29</sup> or as an "excise tax," and some courts, considering it the latter, have held that the Legislature is not prevented by the requirement of uniformity in direct taxes, or property taxes, from levying *excise taxes* at varying rates upon higher incomes on a graduated scale.

But in other States, where the courts have taken the view [like this Court] that the income tax is a property tax, it has been held that the constitutional requirement of uniformity in taxation forbids such discrimination among taxpayers, in levying property taxes, based merely on differences in the aggregate amounts of their respective incomes.

---

<sup>29</sup> As it was held to be by this Court in *Pollock v. Farmers Loan and Trust Company*, *supra*, 157 U. S. 429, 553, *et seq.*; and (rehearing), 158 U. S. 601, 637.

It has been so held, for instance, in the following States:

ALABAMA :

*Eliasberg Bros. Merc. v. Grimes*, 204 Ala. 492; 86 So. 56 [1920].

ILLINOIS:

*Bachrach v. Nelson*, 349 Ill. 579; 182 N. E. 909, 915 [1932].

PENNSYLVANIA:

*Kelley v. Kalodner*, 320 Pa. 180; 181 Atl. 598 [1935].

TENNESSEE:

*Evans v. McCabe*, 164 Tenn. 672, 52 S. W. (2d) 159 [1932].

WASHINGTON:

*Cullerton v. Chase*, 174 Wash. 363; 25 Pac. (2d) 81 [1933].

G. Plainly the line of decisions applicable here,—with relation to the power of the Legislature of Puerto Rico, under the strict limitation imposed by the Congress, “That the rule of taxation in Puerto Rico shall be uniform,”—and in view of the decision by this Court, which likewise binds the Legislature in this respect, that in interpreting Acts of Congress, and in the view of the federal courts, “income” is to be regarded as property, and “income taxes” as “property taxes,”—and in view also, particularly, of the broad character the requirement of Section 2 of the Organic Act, imposing the rule of uniformity alike upon all taxation in Puerto Rico (not upon property taxes only),—is the line of cases cited in the last preceding sub-paragraph decided by the courts of those States where “income” is similarly regarded as “property,” and “income taxes” as “property taxes,” and which hold accordingly, that under constitutional provisions requiring “uniformity” in taxation, the Legislature is without power to levy income taxes on a progressive graduated scale levy-

*ing higher percentage rates upon higher incomes, and thus discriminating between individual taxpayers, upon the basis only of differences in the amounts of their aggregate incomes.*

Those decisions are directly in point here. The insular Supreme Court, as well as the Circuit Court of Appeals, should have followed them, and should, therefore, have held both Section 12 and also Section 13 of the Puerto Rican Income Tax Act, as amended by the 1941 amendments, levying these progressive graduated scale taxes, to be beyond the power of the Legislature of Puerto Rico, and void.

H. The insular Supreme Court in declining to follow that line of State decisions and in upholding Sections 12 and 13 of the Puerto Rican Act levying the progressive graduated income taxes, placed its decision upon four grounds (R. 21-22). It wholly ignored all of the State decisions; and held: (1) That it should disregard the decisions of this Court in *Pollock v. Farmers Loan and Trust Company*, *supra*, 157 U. S. 429, 553 *et seq.* (decision on original argument), and 158 U. S. 601, 618, 622, 628, *et seq.*, 637 (on rehearing), on the ground that "its *ratio decidendi* has fallen by the wayside"<sup>30</sup>; (2) That it is immaterial, in any

---

<sup>30</sup> Citing *Graves v. N. Y., ex rel. O'Keefe*, 306 U. S. 466, 480; which, however, does not support the insular Court in this; and does not even mention the *Pollock v. Farmers Loan and Trust Co.* case, nor the question as to whether or not "income" is property, or "income taxes" property taxes. The *Graves* case holds only that a New York State non-discriminatory tax on income, applicable to salaries, as applied to the salary of an employee of a federal agency, is not a tax on the federal agency itself; that (306 U. S. *supra*, at p. 480):

"It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. \* \* \* The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable, \* \* \*, and the

event, whether the tax is a direct tax or an excise (R. 21)<sup>31</sup>; that (3) the only meaning of the requirement "That the rule of taxation in Puerto Rico shall be uniform," is *geographical*, requiring only that "a tax shall apply in the same manner everywhere within our borders"; and (4) That the decision of the Circuit Court of Appeals, First Circuit, in *Domenech v. Havemeyer*, 49 F. (2d) 849, 852, and the former decision of the insular Court itself in *Loiza Sugar Co. v. Domenech, Treasurer*, 43 P. R. Rep. 855, 857-858, "have no bearing on this particular problem" (R. 22).

The insular Court's disregard of this Court's decision in *Pollock v. Farmer's Loan & Trust Co.*, is simply not justified by anything in the *Graves-O'Keefe* case, upon which the insular Court relies, as indicated in the margin here (footnote 30, *ante*, pp. 51-52).

Here again the insular Court has simply refused to be bound by the authority of a decision of this Court. Its error is plain. It is not for the insular Court to "whittle down" a decision of this Court.

The insular Court places its assertion (R. 21-22) that it is immaterial whether the tax is a property tax, or is an excise, upon the theory that that distinction (R. 21):

"involves a problem which is peculiar to the Federal system. This is because the only constitutional requirement which flows from a finding that a tax is a

---

only possible basis for implying a constitutional immunity from state income tax of the salary of an employee of the national governmental agency is that the economic burden of the tax is in some way passed on so as to impose a burden on the national government" \* \* \*

That has nothing to do with this case.

<sup>31</sup> With which we agree, since Section 2 of the Organic Act broadly extends the requirement of uniformity in Puerto Rico to all taxation, of every kind—unlike most of the State constitutions, which usually restrict the requirement to property taxes, or direct taxes, only.

direct one is that it shall be apportioned according to population (Article 1, Section 9 of the Constitution of the United States). But that requirement has no reference to insular tax legislation in which it is provided that a tax shall apply in the same manner everywhere within our borders. We therefore obtain no guidance from the effort to label the income tax herein as a direct tax”;

and that (R. 22):

“As the statutes involved herein do not provide for different rates of taxation at different places within Puerto Rico but provide only for higher rates at higher income levels, we find no violation of the rule for uniform taxation in Section 12 and 13.”

It will be observed that the insular Court's reasoning in support of its doubtful proposition [or two propositions], which we have designated here as its reasons numbered “(2)” and “(3)” above [*ante*, pp. 51-52] really runs together, rather confusingly, into one proposition; viz., that, as the insular Court apparently understands, (a) the difference between direct taxes and excises “is peculiar to the Federal system” and is of importance only “because the only constitutional requirement which flows from a finding that a tax is a direct one is that it shall be apportioned according to population” of the several States of the Union;<sup>32</sup> and (b) that the distinction is of importance in federal taxation only because if the tax is a direct one it must be apportioned according to the census or enumeration [except the federal income tax, by virtue of the Sixteenth

---

<sup>32</sup> But that is an amazing statement. The difference between direct taxes and excises runs all through the law of taxation, and is apparently recognized everywhere, in the legislation of all of the States of the Union and of their subdivisions, for many purposes. It is plainly recognized in the legislation of Puerto Rico, and has been from the earliest days of the United States sovereignty there. For example, the Excise Tax Act, the “Internal Revenue Law of Puerto Rico,” Act No. 85 of August 10, 1925, as amended (one section of which was before the

Amendment]; whereas, otherwise (R. 21): "If it is a duty, impost, or excise, it shall be uniform throughout the United States;" and (c) the insular Court thereupon concludes (R. 21-22) that, because this Court has held that the constitutional provision in Section 8 of Article I of the United States Constitution, in view of the way it is used in the Constitution and its context there, relates only to geographical uniformity throughout the Union,—as it plainly does,—that, "According to the settled doctrine, the uniformity exacted is geographical, not intrinsic;"<sup>33</sup> and that "The rule of liability shall be the same in all parts of the United States;"<sup>34</sup> therefore, it follows that the requirement made by the Congress in Section 2 of the Organic Act "That the rule of taxation in Puerto Rico shall be uniform", likewise relates only to geographical uniformity.

*Non sequitur.* There is nothing whatever either in the phraseology or in the context of this provision, Section 2 of the Organic Act, indicating any intention by the Congress so to limit the meaning of the word "uniform"; and it has never heretofore been so understood. (*Confer* the decision of the Circuit Court of Appeals, First Circuit, in *Domenech v. Havemeyer*, 49 F. (2d), 849, 852; and that of the Supreme Court of Puerto Rico itself in *Loiza Sugar Co. v. Domenech, Treasurer*, *supra*, 43 P. R. Rep. 855, 857-858. And *confer* also the decisions of the Circuit Court of Appeals in *Gallardo v. Porto Rico Ry. Light and Power Co.*, 18 F. (2d) 918, 923 "[10]" and in *Sanchez Morales & Co. v. Gallardo*, 18 F. (2d) 550, 551-552).

---

Circuit Court of Appeals in *San Juan Trading Co. v. Sancho Bonet, Treasurer*, *supra*, 114 F. (2d) 169), is legislation of a wholly different character from the law concerning direct taxation of real and personal property [Title IX, "Revenues" Sections 285 *et seq.*, of the Political Code], as well as from the Income Tax Act here under consideration.

<sup>33</sup> *Steward Machine Co. v. Davis*, 301 U. S. 548, 583; cited by the insular Supreme Court (R. 21).

<sup>34</sup> *Florida v. Mellon*, 273 U. S. 12, 17; quoted by the insular Court (R. 21-22).

The insular Supreme Court cites (R. 22) in support of its holding that the requirement that the rule of taxation in Puerto Rico shall be uniform, means only geographical uniformity,—that “a tax shall apply in the same manner everywhere within our borders”,—the decision in *San Juan Trading Co. v. Sancho Bonet, Treasurer*, *supra*, 114 F. (2d) 969, 972, relating to the tax on matches. But there is nothing in that decision supporting this proposition of the insular Court in the present case. All that the Circuit Court of Appeals said on that point in the *San Juan Trading Co.* case was that the tax there before this Court was “not obnoxious to the uniformity clause”, because (a) that tax applied “equally in all parts of Puerto Rico”, and because also (b) “all matches in each class are treated the same.”

There is in that opinion no intimation whatever that *geographical uniformity* was considered the *only* type of uniformity required by that clause of Section 2 of the Organic Act. Indeed, the opinion indicates the direct contrary.

The insular Supreme Court waives aside the decision in *Domenech v. Havemeyer*, *supra*, 49 F. (2d), 849, 852, which had stricken down, for violation of this uniformity clause of Section 2 of the Organic Act, the “Excess Profits Taxes” clause of a former Puerto Rican Income Tax Act, No. 43 of 1921,—and also the decision, following it, of the insular Supreme Court itself in *Loiza Sugar Co. v. Domenech, Treasurer*, *supra*, 43 P. R. Rep. 855, 857-858,—on the ground that, as the insular Court says (R. 22), those decisions “have no bearing on this particular problem”.

The insular Supreme Court wholly fails, however, to explain why it considers that those decisions have no bearing on this problem. It says only (R. 22, *supra*), “We have considered them carefully, but see no purpose in extending this opinion further by distinguishing them in detail”. It makes no further comment upon them.

Those decisions are plainly in point. Their holdings are directly to the contrary of the insular Court's present theory as to the uniformity in taxation clause of Section 2 of the Organic Act being so limited in meaning as to require only geographical uniformity. They strike down the "Excess Profits Taxes" provision of the 1921 Act,—not at all because of any lack in it of geographical uniformity throughout the Island,—but on the contrary, on the sole ground of lack of uniformity in the incidents of the graduated progressive "Excess Profits Tax", on the sliding scale provided by Section 17 of that 1921 Act. The Circuit Court of Appeals there said, in *Domenech v. Havemeyer*, *supra*, 49 F. (2d) at page 852:

"The taxes now sought to be recovered in all three suits are largely excess profits taxes. We think them condemned by section 2 of the Organic Act (39 Stat. 952. [48 USCA. 737], which requires the Legislature of Porto Rico to make its taxes uniform."

This was followed and quoted word for word by the insular Supreme Court itself in a case before it fifteen months later [July 26, 1932, *The Loiza Sugar Co.* case, 43 P. R. Rep., *supra*, 855, 857]. There is not a word there about mere geographical uniformity.

It is true that the particular form of discrimination and lack of uniformity, on account of which the Circuit Court of Appeals for the First Circuit struck down the "Excess Profits Taxes" of the 1921 Act, was that the sliding scale in that Act was so constructed as to be in itself a particularly flagrant violation of the rule; and, therefore, that to point that out was as far as that Court needed to go in that case<sup>35</sup> [or the insular Supreme Court, in the following *Loiza Sugar Company* case].

*But those holdings necessarily implied the corollaries without which they could not have been made:* (1) That the requirement of Section 2 of the Organic Act of a "uniform"

<sup>35</sup> *Domenech v. Havemeyer*, *supra*, 49 F. (2d) 849, 852.

rule of taxation in Puerto Rico was not merely geographic in character requiring a tax to be made applicable throughout the entire area of the Island, but that the requirement was also applicable to prevent discriminations among taxpayers themselves, and so, was applicable to such a discrimination, for example, as the one this Court struck down in that case; and also (2) That discriminations among taxpayers, based only on the total amounts of their respective incomes, constituted violations of the rule of uniformity.

The requirement is not merely that the rule of taxation in Puerto Rico shall be *reasonably* uniform, or that it shall be *more or less uniform*; but it is absolute, that it shall be "uniform",—without any degrees of uniformity about it. It says nothing whatever, either expressly or by implication, about any sliding scale of taxation of incomes, at all.

### Point III.

**The taxation of stockholders on dividends received by them from domestic corporations is double taxation, and violates the requirement of Section 2 of the Organic Act, "That the rule of taxation in Puerto Rico shall be uniform".**

A. Prior to these 1941 amendments, stockholders of domestic corporations were expressly allowed credits, for the purpose of the normal tax, of amounts received as dividends from corporations (Acts of 1925, Sec. 18-(a); *ante*, p. 5); but this was reversed by these 1941 amendments, both by striking out that provision of Section 18-(a), and also by expressly providing, in the amendment of Section 12-(a), "that said normal tax may also be assessed and collected on the income received by shareholders for dividends."

B. These 1941 amendments, however, not only retain, but increase to a flat rate of seventeen (17%) or nineteen (19%) per cent per annum, the tax levied directly in the

first instance on the net income of the corporations themselves (Sec. 28; *ante*, p. 4). This of course results, in effect, in *double taxation* of the individual stockholders on the income accruing upon their investments in the capital stock of any corporation, in association with the other stockholders of the corporation, on the business or investment in which the money is ventured in this collective form.

C. An individual investing his money directly in his own name in a business enterprise operating right alongside of a corporation, and doing the same kind of business, is taxed only once on the income realized by the venture. This *double taxation* of a person who has chosen to invest his money along with other individuals as stockholders in a corporation is not only "double taxation," in itself, but is *a direct violation of the rule of uniformity in taxation which the Congress has imposed as a limitation upon the taxing powers of the Legislature of Puerto Rico.*

D. The insular Supreme Court in upholding these 1941 amendments, in this respect (R. 23-24) relies simply on decision of this Court that "the receipt of dividends from a corporation is an event which may constitutionally be taxed either with or without deductions \* \* \* even though the corporate income which is their source has also been taxed."<sup>36</sup>

But the insular Supreme Court apparently wholly fails to note that all of those decisions dealt either with the powers of the Congress itself, or else with the powers of State Legislatures where it did not appear that the Legislature was bound by any such iron rule of uniformity in taxation as the Congress has chosen to impose upon the Legislature of Puerto Rico by the provision in Section 2 of the Organic Act.

<sup>36</sup> *Welch v. Henry*, 305 U. S. 134, 145-146; *Wisconsin v. J. C. Penney Company*, 311 U. S. 435, 442, *et seq.*; *Lynch v. Hornby*, 247 U. S. 339; *Helmich v. Hellman*, 276 U. S. 233; *United States v. Hudson*, 299 U. S. 498, 500.

E. The Congress itself is bound, in this respect, only by the provision of the Fifth Amendment forbidding the taking of property without "due process of law"; which, even if it implies the requirement of "equal protection of the laws", does not imply any requirement of an iron rule of uniformity in taxation. For example, this Court said in one of the cases relied upon here by the insular Court itself<sup>37</sup> (R. 23):

"It is a commonplace that the equal protection clause does not require a State to maintain rigid rules of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity".

That was said with reference to the equal protection clause in the Fourteenth Amendment, which binds the State Legislatures, but does not bind the Congress nor the federal Government; which, as above noted, is bound only by the Fifth Amendment containing no express "equal protection" clause.

F. But for Puerto Rico the Congress, the supreme legislature for the Territory, under its constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Art. IV, Sec. 3, Clause 2), has seen fit to impose on the Territorial legislature the positive requirement that in the making of laws for the Territory, it shall not only observe the mandates of not depriving any person of property "without due process of law", and of the "equal protection of the laws", but, also, specifically, that it shall observe the absolute requirement "That the rule of taxation in Puerto Rico shall be uniform."

Obviously this is a much more stringent requirement than that simply of the "due process of law" clause in the Fifth Amendment, the only thing that binds the Congress itself in this respect.

<sup>37</sup> *Welch v. Henry*, *supra*, 305, U. S. 134, 145.

### Point IV.

Taxation of members of partnerships on partnership profits distributed to them, after the partnership as a unit has already been taxed on the same profits, is, even more flagrantly, not only "double taxation" on the same profits, and a violation of the rule of uniformity in taxation which the Congress has seen fit to impose upon the Legislature of Puerto Rico, but also a taking of property without due process of law and denial of the equal protection of the laws.

A. The same considerations apply here that are stated in the preceding Point III with reference to such double taxation of dividends received from stockholders of corporations.

B. But the violation is not only that it is double taxation of these profits, a violation of all of the established principles of proper taxation, but that, even more flagrantly than in the case of dividends received from corporations, it is a violation of the positive requirement of the rule of "uniformity" in taxation, specifically imposed on the local Legislature by Section 2 of the Organic Act.

C. *There is a manifest difference here between corporations and partnerships.* The corporation exists only by the grant of the sovereign, by a specific grant of a charter by the legislature, or by the executive through legislative authority—as for instance by virtue of a general corporation law, as in Puerto Rico, and likewise in the States of the Union.

The partnership, on the other hand, exists solely by the will of its own members. It requires no charter or license from the sovereign. As was pointed out by the Supreme Court of Tennessee in its above quoted decision in *Corn v. Fort*, 170 Tenn. 377; 95 S. W. (2d) 620, 623 (*ante*, p. 34), simple or unlimited partnerships, like individuals,

hold no franchise or special privilege conferred by the sovereign not belonging to citizens generally of

common right. The right of individuals to combine their activities as partners is independent and antecedent to government."

D. In Puerto Rico partnerships are recognized and regulated, by the provisions of the Civil Code (Edition of 1930, Title VIII—"Partnership", Sections 1556-1599), and the Code of Commerce (Arts. 125, *et seq.*; Appendix, *infra*, pp. 103-106); but those provisions, based on and largely repeating corresponding provisions in the Civil Code of Spain, inherited in substance from ancient civil law,—[the Code of Commerce is the Spanish Code itself],—do not require any license, charter, or grant from the sovereign authority,—or from the *quasi*-sovereign government of Puerto Rico,—as does a corporation, whether organized under the general Corporation Law of Puerto Rico (the Act of March 2, 1902, Revised by the Act of March 9, 1911, Rev. Codes and Stats. of 1911, Title I, "Private Corporations", Pars. 407 *et seq.*); or under the ancient provisions of the Civil Law, recognized in the Civil Code.

E. The insular Supreme Court, however, brushes this essential difference between the corporation and the partnership aside, by saying simply (R. 24):

"But the term 'partnership' is not used in our Income Tax Act in the common law sense. It is a translation of the term '*societed*' found in the civil law. And a *societed* is a juridical person apart from the members thereof. *Puerto Rico v. Russell & Co.*, 288 U. S. 476. There is therefore no constitutional objection against assimilating a partnership or *sociedad* to a corporation for tax purposes, and taxing both the partnership and its individual members on the same income. *Fantauzzi et al. v. Bonner*, 34 P. R. R. 464, 474. To compare our situation with that obtaining under the Federal Income Tax Act as applied to a common law partnership, which under that Act is not treated as a separate entity, except for accounting purposes, and which therefore pays no tax as such, is to invoke a false analogy.

F. —(1) In this statement, the insular Supreme Court overlooks at least two essential elements: (a) The difference, under laws of Puerto Rico, between the different classes of partnerships recognized by the Code of Commerce and the Civil Code, substantially as inherited from the laws of Spain. (*Confer*, Code of Commerce, Book II, Title 1, Section II, "*General Co-Partnerships*", with *ibid.*, Section III, "*Limited Co-Partnerships*," and Civil Code, *supra* (Ed. of 1930), "*Partnerships*," Secs. 1566 et seq.); and (b) The very sharp difference in many essentials between the general partnership, or ordinary civil partnership on the one hand, and on the other hand, those types of the civil law *sociedad* which are usually referred to in English translations as "limited partnerships," or "limited co-partnerships,"<sup>51</sup> that is to say the "*sociedad en comandita*" and the "*sociedad anónima*," which partake, respectively, in essence, rather of the characteristics of such organizations as the "partnership associations" of Pennsylvania and of Michigan, and of the ordinary private business corporation, than of those of an ordinary partnership; whereas the ordinary general partnership in Puerto Rico, under the Civil Code and the Code of Commerce, is analogous in essential respects to the ordinary common law partnership.

The partners are liable for its debts, share in its profits, and take part in its management. (Code of Commerce, *supra*, Arts. 127, 129; Rev. Stats. & Codes of 1911, Pars. 7686, et seq.; Appendix, *infra*, pp. 89-90.)

G. The insular Supreme Court also plainly overlooked in this connection, in saying (R. 24):

"But the term 'partnership' is not used in our Income Tax Act in the common law sense. It is a translation of the term '*sociedad*' found in the civil law,"

*the fact that the Legislature, in enacting by this amendatory Act No. 31, of April 12, 1941, these amendments to the Income Tax Law, so changed and broadened the definition of*

the term 'partnership,' for the purposes of the Act, as, expressly, to make it include, in addition to all the ordinary types of partnership or "*sociedad*," (Sec. 2-(a)-(3) [*ante*, p. 4], also:

"And it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit."

*In other words, the Legislature expressly defines the term, for the purposes of these 1941 Acts, as including ordinary common law partnerships, as they are known here in the mainland; and also, even further than that, all simple joint ventures.*

H. That is to say, if John Smith and Bill Jones, for example, join in buying a herd of cattle and ship them to market, and sell them at a profit, and then divide the profits [although without any further joint transactions between them, or further partnership of any sort], they will, under these amendments to the Income Tax Law of Puerto Rico, be taxed, *first*, nineteen percent (19%), as a "partnership," on their partnership profits, under Section 28 of the Act as thus amended,—[or, possibly, only seventeen (17%) percent, if treated as a "domestic partnership" under that section]; and then, *second*, taxed in addition a second time as individuals, upon their respective shares of their remaining "partnership profits" distributed to them, after having already deducted the nineteen per cent [or 17%] already thus taken from them as "partnership profits."

I. Most plainly, this is violation of the rule of uniformity in taxation required by Section 2 of the Organic Act,—[as well as unreasonable classification, amounting to deprivation of property without due process of law, and denial of the equal protection of the laws].

If, in the supposed case, John Smith and Bill Jones, instead of joining together in purchasing this herd of cattle,

had each one gone out by himself, individually, and bought one-half of the herd, and shipped it in the same way, and had individually marketed his own half; then he would not have been taxed doubly. There would then have been no taxation of so-called "partnership profits"; but only his own tax as an individual on his own gain that he had thus made on his half portion of the herd.

### Point V.

**The Legislature of Puerto Rico does not passess the power [without directly amending the community property laws] to levy the income tax against the husband alone upon the entire aggregate income of the conjugal community.**

A. The provision (*ante*, pp. 3-4) of Section 13 of the Act No. 31 of April 12, 1941, amending section 24-(b) of the former Act of 1925,—[which had recognized, in accordance with the community property laws of Puerto Rico, the right of husband and wife, living together, each to make his and her own separate income tax returns if they saw fit, and each to be taxed separately on such separate returns for **one half of the community income**], so as now to provide, to the direct contrary [Appendix, *infra*, p. 100]:

"(b) If a husband and wife living together have a net income for the taxable year of \$2,000, or over, or an aggregate gross income for such year of \$5,000 or over, the total income of both shall be included in a single joint return, and the normal and additional tax shall be computed on the aggregate income. The net or gross income received by any one of the spouses shall not be divided between them,"

are likewise violative of the rule of uniformity in taxation; and are also a deprivation of property without due process of law, and a denial of the equal protection of the laws; and are *an attempt to amend the community property laws* of Puerto Rico, embodied in Sections 91-93, 1267-1268, 1295-

1333 of the Civil Code, and elsewhere, or to repeal them to that extent, *by implication*, without expressly repealing them, or amending or reenacting them as amended, in the way required by paragraph 9 of Section 34 of the Organic Act, prescribing the method to be followed by the Legislature in amending statutes, and requiring that "so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length".

This amendment of Section 24-(b) very greatly increases the tax liability of husband and wife, if (1) they live together, and if (2) the aggregate of their joint incomes amounts either (3) to a "net income" of \$2,000 or over, or (4) to "an aggregate gross income" of \$5,000 or over; because under the graduated sliding scales prescribed for both the normal tax and for the surtax it results: (a) That the single tax thus levied on the aggregate of their separate incomes, so taken jointly and considered as a unit as the basis for taxation under the sliding scales, is very greatly increased over the sum of the two separate taxes which each would pay, if they were taxed separately on their separate incomes; and, therefore, over the sum of what they would pay if not living together [or if unmarried]; and (b) moreover the assessment of the entire tax against the spouse making the single return (whether husband or wife) in effect amounts to taxing that spouse individually upon not only his or her own property,—his half share in the community property income,—but also upon the property of the other spouse,—the half share belonging to the other spouse in the community income.

B. Under the community property laws of Puerto Rico,—as under the community property system generally, wherever that system is in force, as it is in some of the States in the United States, derived from the laws of Spain or of France,—all income received by either spouse [except through gift, legacy, or descent, or by right of redemption or by exchange for other property belonging to one of the

spouses only] falls into the community property and is owned share and share alike by the two spouses. And, while the husband is the manager of the property, much in the same way as a board of directors is the manager of the property of a corporation, or as the managing agent or director of any other partnership [or "*sociedad*" under the civil law of Puerto Rico and other civil law jurisdictions] is the managing agent of the partnership, yet that does not mean that he is the sole owner of the partnership or of the "community" property. The wife has an undivided one-half interest in it; and whether or not that interest is to be considered as technically "vested",<sup>38</sup> it is in any event a definite ownership. The half interest belongs to her. It is her property. This is not a rule of procedure, merely; but is a rule of substantive property<sup>39</sup> law, especially where the income is from earnings.

C. As above indicated, the provisions of the Civil Code of Puerto Rico, and other laws of the Island embodying the community property system, were not amended or changed in any way by the 1941 amendments to the Income Tax Law; and they cannot be regarded as amended by implication by the amendments to the tax laws; not only because (1) amendments or repeals by implication are not favored and are not to be implied in any case unless absolutely necessary, but also because (2) in Puerto Rico the Legislature is expressly forbidden by Paragraph 9 of Section 34 of the Organic Act, above mentioned, from so amending statutes of the Island by indirection.

<sup>38</sup> A word borrowed from the technical terminology of the English common law conveyancing system, and not accurately reflecting, in reality, any concept of the Civil Law.

<sup>39</sup> "It is a fundamental postulate of the community property system that whatever is gained during coverture by the toil, talent or other productive faculty of either spouse, is community property." (*Hammonds v. Commissioner of Internal Revenue*, 160 F. (2d) 420, 422; C. C. A.—X).

*Confer, W. D. Johnson vs. Commissioner*, 1 Tax Court (U. S.) 1041.

D. It results, therefore, that the preexisting community property laws of the Island are to be regarded as remaining in full force in every respect, untouched and unaffected by these 1941 amendments to the Income Tax Law. And further that, therefore, the relationship between those community property laws of the Island and these 1941 amendments to the tax law is to be regarded as strictly analogous to the relationship between the community property laws of any State of the Union,—such as, for instance, California, or Washington, or Texas, or any other State having the community property law system,—and the federal income tax laws.

E. The community property laws of Puerto Rico, as above indicated, are embodied primarily in Sections 91-93, 1267-1268, and 1295-1333 of the Civil Code of Puerto Rico (Appendix, *infra*, pp. 84-89). The insular Supreme Court has itself held that they constitute “*the conjugal partnership \* \* \* in an identical or similar form to that*” existing in the community law States of the Union; and that they give the wife “*something more than a mere expectancy*” in the community property (*ante*, pp. 32-33).

F. This Court, in construing and determining the effect to be given to the provisions of the federal Income Tax Act laying a tax “upon the net income of every individual”,<sup>40</sup> has held that it does not empower or authorize the Internal Revenue Commissioner to require a single return from the husband [or wife] of the aggregate community income, or to levy a single tax on the aggregate community income of spouses living in a community property State where the local laws give a definite *ownership* interest in the community property to each of the spouses. This has been determined in cases coming from States

---

<sup>40</sup> Sections 210-(a) and 211-(a) of the Revenue Act of 1926 (26 U. S. C. A. Pars. 951, 952) concerning which this Court notes: “The language has been the same in each act since that of February 24, 1919, 40 Stat. 1057” (*Poe v. Seaborn*, 282 U. S. 101, 109).

having community property statutes closely analogous<sup>41</sup> to those of Puerto Rico.<sup>42</sup>

G. This Court appears never to have had occasion directly to determine the question of the *power* of the Congress to require a single income tax return of the entire aggregate community income in such cases, or to levy thereon a single tax upon the progressive sliding scale basis at a higher rate than upon the separate individual returns for husband and wife; because the Congress has never undertaken to override in that way the statutes of the community property States in the Union. To the contrary, it has several times directly refused to adopt amendments to the income tax laws repeatedly urged upon it at different times [*Confer, Poe v. Seaborn, supra*, 282 U. S. 101, 114-116, ROBERTS, J.<sup>43</sup>].

H. This Court, has, however, had occasion directly to decide the question of the power of a State Legislature in this connection, in circumstances quite analogous to those here presented with relation to the power of the Legislature of Puerto Rico. In *Hooper v. Tax Commission*, 284 U. S. 206, 212-218, it was decided that the Legislature of Wisconsin was without power [in the absence of any direct amendment of the statutes of that State concerning the property

---

<sup>41</sup> For the analogy, see *Casal v. Sancho Bonet, Treasurer*, 53 P. R. Rep. 609, 618; *infra*, p. 51.

<sup>42</sup> WASHINGTON: *Poe v. Seaborn*, 282 U. S. 101, 110-113. ARIZONA: *Goodell v. Koch*, 282 U. S. 118, 120-121. TEXAS: *Hopkins v. Bacon*, 282 U. S. 122, 125-127. LOUISIANA: *Bender v. Pfaff*, 282 U. S. 127, 130-132. CALIFORNIA: *United States v. Malcolm*, 282 U. S. 792, 793-794 (Reversing the rule of the earlier case of *United States v. Robbins*, 269 U. S. 315, with relation to California, because, as this Court specifically states (at p. 794) "of amendments of the California statutes", since that case was decided).

<sup>43</sup> It has, however, by the 1942 Internal Revenue Act (Sec. 301-(b)-(2), 56 Stat., 798, 942), made the attempt with reference to estate taxes, as well as gift taxes, and insurance taxes,—[held beyond its power by the Louisiana Supreme Court; appeal dismissed by this Court for lack of jurisdiction]. See *Flournoy v. Wiener*, 321 U. S. 253; 203 La. 649; and Judge Donworth's article in the April, 1944, Washington [State] Law Review; (*ante*, p. 16, footnote 23).

rights of married women] to levy a single tax on the combined income of the spouses, under a graduated scale of taxation, at a higher rate than would have been due from them if their taxable incomes had been separately assessed; this Court there saying (at p. 215):

“We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a State to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment.<sup>44</sup> That which is not in fact the taxpayer's income cannot be made such by calling it income. Compare *Nichols v. Coolidge*, 274 U. S. 521, 540.”

I. The insular Supreme Court in the present case directly refused to follow (R. 16-20) that decision of this Court in *Hoeper v. Tax Commission*, *supra*. The insular Court does not attempt to distinguish the *Hoeper* case in any way. It simply refuses to be bound by it, and argues that its authority is weakened or destroyed by comments of text writers and by what the insular Court thinks indications of a possibly different doctrine more recently growing up in this Court in decisions relating to gifts, assignments and trusts, more or less analogous to the question decided in the *Hoeper* case; and concludes (R. 20) by a direct questioning of “whether there was any validity left in *Hoeper v. Wisconsin*” [*sic*; *Hoeper v. Tax Commission*, *supra*,] “as a controlling authority.”

J. *This was the clearest kind of error.* The insular Supreme Court possesses no authority to disregard the decisions of this Court in that way. Those decisions are binding upon the insular Court.<sup>45</sup>

<sup>44</sup> For Puerto Rico, the Fifth Amendment, and Section 2 of the Organic Act.

<sup>45</sup> The Circuit Court of Appeals attempts to avoid the effect of this by saying (R. 63); “Since under Puerto Rican Community property law the income was that of the husband, there is nothing in *Hoeper v. Wisconsin* which would require

K. It follows that Section 24-(b) of the Income Tax Law of Puerto Rico, as amended by Act 31 of April 12, 1941, requiring that the total income of both spouses shall be included in a single joint return, and that the normal and additional taxes shall be computed on the aggregate income, and directing that neither the net nor the gross income received by any one of the spouses shall be divided between them,<sup>46</sup> if construed as amending or overriding the provisions of Section 12-(a), as amended by the same Act No. 31 in an earlier section and as again amended and reenacted a month later by Act No. 159 of May 13, 1941 [Appendix, *infra*, p. 94], so as to require the lumping of all of the income from both spouses [whether derived from community income or otherwise], as was attempted by the Legislature of Wisconsin in the statute before this Court in

---

that the husband and wife be allowed to split this income between them for tax purposes".

But the insular Court does not hold,—and never has,—that "the income was that of the husband". The wife owns an interest in it which the insular Court says "*is something more than a mere expectancy*" (R. 13, *supra*), under a system which that Court holds "*exists in an identical or similar form*" [Casal case, *infra*, p. 51] to that existing in the State of Washington and the other States whose laws were before this Court for consideration in *Poe v. Seaborn*, *supra*, and its companion cases [ARIZONA, LOUISIANA, TEXAS; and CALIFORNIA also (*United States v. Malcolm*, *supra*) after its code had been amended subsequently to the way it had stood when the earlier *United States v. Robbins* case arose.

And it is significant that on the rehearing of the *De La Torre* case the insular Court expressly noted (*National City Bank v. De la Torre*, *supra*, 54 P. R. Rep. 651, 654-655, *supra*;

"Given the changes that have occurred in the institution in Puerto Rico, similar to those of California, we do not doubt in reality that the interest of the wife is something more than a mere expectancy and that it can be said that here, as well as in California, her interest in the property of the conjugal partnership is greater than that of a presumptive heir."

<sup>46</sup> This apparently requires that even income received by either spouse from gift, legacy, or descent, or in exchange for other separate property, shall be lumped with the community income for tax purposes.

*Hoeper v. Tax Commission, supra*, was beyond the power of the Legislature and is void.

It does not purport to amend the community property laws of the Island; and it cannot be considered as amending them by implication, in view of the prohibition in Section 34 of the Organic Act against amendment of Puerto Rican statutes in that manner, as well as in view of the general rule that amendments or repeals of statutes by implication are not favored in any case.

L. In any event section 24-(b) as thus amended by Act No. 31 of April 12, 1941, is controlled by the later enactment in Act No. 159, the following month, May 13, 1941, by which section 12-(a) of the Act was again amended and re-enacted, so as once more to re-enact exactly the same phraseology, in this respect, that had been used in the amendment of April 12th, and had also been used in the former Act of 1925, that:

“There shall be levied, collected and paid for each taxable year *on the net income of every*” [“*individual*” (1925); “*citizen*” (Act No. 31)], “*person*” (Act No. 159).

L.—(1) That is the same phraseology used in the sections of the federal Income Tax Act which “lay a tax upon the net income of every individual” (*Poe v. Scaborn*, 282 U. S. 101, 109, *supra*); and which this Court had held in *Poe v. Scaborn, supra*, and in its companion cases (*ante*, p. 10, footnote 16) did not indicate any intention on the part of the Congress to override the community property laws of the States of the Union possessing such laws.

L.—(2) Act No. 159 of May 13, is a later expression of the Legislative will than Act No. 31 of the preceding month, and therefore controls it, where there is any conflict between them. This reenactment by the later Act of section 12-(a) in this respect, with the same phraseology as the earlier Act, thus expressly levying the tax “on the net income of

*every person*", conflicts with, and therefore overrides, the provision of section 24-(b) as it was amended by the earlier Act No. 31 of April 12, insofar as that Act may have intended to levy the tax on husband and wife, not individually "on the net income of every person", but, to the contrary, on the combined joint incomes of husband and wife lumped as one for tax purposes.

L.—(3) This void amendment of Section 24-(b) of the Act may be elided under the "separability clause" in Section 27 of the same Act 31, without affecting the balance of the Act, because of its independent, separable character.

## Point VI.

**A. The insular Supreme Court correctly held** that the *exception* contained in Section 12(a), as amended by Act. No. 159 of May 13, 1941, discriminating in favor of American citizens residing in Puerto Rico, as against non-resident aliens, constituted a violation of the rule of uniformity in taxation in Puerto Rico required by Section 2 of the Organic Act, as well, also, of a denial of the "equal protection of the laws", and a deprivation of property "without due process of law."

A. That decision (R. 24-28) is amply supported by the authorities upon which that Court relied (*Yick Wo v. Hopkins*, 118 U. S. 356, 369; *Hines v. Davidowitz*, 312 U. S. 52; *Truax v. Raich*, 239 U. S. 43, 42, *Ex parte Kawato*, 317 U. S. 69, 71 *et seq.*; *Edwards v. California*, 314 U. S. 160, 173-174; *Ex parte Kotta* (Cal.), 200 Pac. 957, 958; *Fraser v. M'Conway & Torley Co.*, 82 Fed. 257; *Juanita Limestone Co. v. Fagley*, 187 Pa. 193; 40 Atl. 977.

**B. But the Insular Supreme Court Was in Error on Holding [and the Circuit Court of Appeals in not reversing it in this] (R. 29) that:**

"Our holding does not, of course, vitiate the entire tax imposed on the petitioner. He is entitled only to uniformity, or equal protection, which means that his

tax will be calculated at the same rate as that of resident citizens. *San Juan Trading Co. v. Sancho*, 114 F. (2d) 969, 75."

B.—(1). In so holding the insular Supreme Court fails to notice the radical difference between the statute before the Circuit Court of Appeals in the *San Juan Trading Company* case, and the statute here involved. The Insular Court says nothing further upon this point. Its discussion of it is confined to the five lines above quoted. It relies wholly upon the Circuit Court of Appeals' decision in the *San Juan Trading Company* case.

C. The general rule is well settled, as to the effect of finding that a part of a statute is beyond the power of a legislature, and therefore void. It was concisely stated by CHIEF JUSTICE FULLER, in delivering the opinion on the rehearing of *Pollock v. Farmers Loan & Trust Co.*, 158 U. S. 601, 635-636:

"It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us, there is no question as to the validity of this act, except sections \* \* \*; and as to them we think the rule laid down by Chief Justice Shaw in *Warren v. Charlestown*, 2 Gray 84, is applicable, that if the different parts

'are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect, the Legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.'

"Or, as the point is put by \* \* \*. And again, as stated \* \* \* in *Sprague v. Thompson*, 118 U. S. 90, 95, where

it was urged that certain illegal exceptions in a section of a statute might be disregarded, but that the rest could stand;

'The insuperable difficulty with the application of that principle of construction to the present instant is, that by rejecting the exceptions intended by the Legislature of Georgia the statute is made to enact what confessedly the Legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what anyone can say it would have enacted in view of the illegality of the exceptions.' "

D. The gist of the lower courts' holding (*ante*, pp. 9-10, 21-22) is that the only effect to be given to the invalidity of that exception is to substitute the rates stated in the *exception* for the principal rule stated in the main clause of the section, and thus to reduce the tax rate for all residents of Puerto Rico to the rate named in the *exception* for American citizens resident in the Island; instead of holding that the effect of finding the exception discriminatory and therefore void was either: (a) Simply to strike down the exception, leaving the balance of the Section to stand as enacted by the Legislature, thereby fixing a uniform rate of 8 per cent per annum for all residents of Puerto Rico, alike;<sup>47</sup> or else (b) To strike down the entire Section, because of the improbability of the Legislature having ever enacted the main clause itself in its present form, if it had realized the invalidity of the discrimination made by the exception in favor of American citizens, and because of lack of power in the Court to re-mold the whole enactment [in addition to striking out the invalid exception clause] in such manner as the Court might assume, or guess, that the Legis-

---

<sup>47</sup> Disregarding, for the present, the discrimination against non-residents of Puerto Rico, and also the further discrimination, as among non-residents themselves between those who are American citizens and others; which is not directly involved in this case, since this appellant was an alien resident in the Island.

lature might have enacted it, if it had realized the invalidity of the discriminatory exception. That is really the exercise of legislative action, beyond the power of a court.

The earlier decision of the Circuit Court of Appeals in the *San Juan Trading Co.* case <sup>48</sup> upon which the insular Supreme Court relies (R. 29), —and which the Circuit Court itself now cites in this connection (R. 66),—fails to support it in this respect. Both those Courts fail to notice the radical difference between the statute before the Court in the *San Juan Trading Co.* case, and those here involved.

### Point VII.

The later November, 1941, amendment to Section 3 of the Income Tax Act limiting the retroactivity to the beginning of the calendar year 1941, relieved petitioner of retroactive liability for the additional 1940 taxes under the earlier April amendments of that same year.

A. Section 3-(a) of this Income Tax Act as it was further amended by the later amendatory Act No. 23 of November 21, 1941, enacted at the special session of the Legislature that year (Laws of Puerto Rico, Special Session, 1941, pp. 72, 74, (supra) expressly limits the retroactivity of the Act to "the calendar year 1941, or any fiscal year ending during the calendar year 1941", and thereby excludes the calendar year 1940 from the retroactive effect of the Act, where, as in the present case, the taxpayer's fiscal year coincided with the calendar year so as not to run over in any way into the calendar year 1941

Section 10 of the November Act expressly repeals "All laws or parts of laws in conflict herewith"; and Section 11 declares "that there exist a necessity and an emergency for the retroactivity of this Act", and that its approval "shall take effect from and after January 1, 1941."

<sup>48</sup> *San Juan Trading Co. v. Sancho Bonet, Treasurer*, 114 F. (2d) 969, 975, *supra*.

The rule is, of course, settled that an amendment of a statute, or an amendatory act, changing as here the phraseology of the earlier statute and directing that the earlier act (or section of the act, as here), "is hereby amended as follows", and then re-enacting the text as it is to read as so amended, *speaks as of the date of the original enactment of the act* (unless the amendatory act directs otherwise, as is not done here). [*Confer: Posadas v. National City Bank*, 296 U. S. 497, 503].

B. It follows that, upon this further amendment of the original Act by the November amendatory act, thus limiting its retroactivity to the calendar year 1941, beginning with January 1, 1941, that amendment carried back, in effect, to the date of the original Act, and automatically wiped out the retroactivity to 1940 of the amendatory provisions of the earlier amending Acts Nos. 31 and 159 of the preceding April and May, 1941; and thereby automatically wiped out whatever effect those April and May acts might otherwise have had upon the tax liability of this appellant upon his 1940 income, and thus wiped out the Treasurer's "reliquidation" of appellant's income taxes for that year 1940.

AS MR. JUSTICE HOLMES ONCE SAID, "When the root is cut the branches fall." (*Smallwood vs. Gallardo*, 275 U. S. 56, 62).

(a) This result is not affected, either one way or the other, by the provision of Section 386 of the Political Code of Puerto Rico (Par. 3093, Rev. Stats. and Codes of 1911), directing that the repeal of any statute shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and that such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

(b) Manifestly, if regarded as applicable to the November, 1941, Act above, limiting the retroactivity of the income tax amendments to the calendar year 1941 with a view thus to saving the effect of the earlier April and May amendments (Nos. 31 and 159 at the regular session of that year above),—then, by the same token, those earlier amendments, made by those April and May Acts, must themselves likewise be regarded as not affecting the tax liabilities fixed by the earlier 1925 act which was in force when the income in question was received and the tax returns made upon it, and the taxes thereon originally paid in full on March 15, 1941. It is as broad as it is long. Either this provision of Section 386 of the Political Code does not affect a situation like this at all; *or else it carries clear through*, and is applicable not only to the November amendment at the Special Session, but also, equally, to the earlier April and May amendments. The result is the same, either way. Either the Code provision does not apply at all, in which case the November amendment at the Special Session is applicable, expressly limiting the retroactivity to the 1941 calendar year; or else the Political Code provision operates all the way through, so that neither the November amendment is applicable to those of April and May, nor are the latter April and May amendments themselves applicable as affecting the tax liability incurred under the earlier statute of 1925 in force when the income was received and the original tax returns were made and the taxes paid in full thereon.

C. In this connection and throughout the consideration of all of the questions involved in this case of the construction and applicability of all these 1941 amendments to the insular income tax laws, the settled rule of *strict construction* in favor of the taxpayer is to be borne in mind that, as it has been phrased by one court (*Connelly vs. San Francisco*, 164 California 101; 127 Pac. 834, 836):

“any attempt on the part of the State, or of the county as one of the subdivisions of the state, to take the prop-

erty of an individual for public purposes by way of taxation, must find an express statutory warrant, and all laws having this object are to be construed strictly in favor of the individual as against the State."

### Point VIII.

These 1941 amendments to the Income Tax Laws of Puerto Rico, taken as a whole, are arbitrary and confiscatory, amounting to taking property for public use without compensation and without due process of law, and amounting also to an attempt to levy taxes for assumed "general welfare" purposes, rather than taxation for usual governmental purpose under the power delegated to the Legislature by the Congress by Section 3 of the Organic Act.

A. This point has been stated in the Petition. [Question 8, of "Questions Presented"; and see also "Additional Facts", Pars. 3, 4 and 5, and Footnotes 21 and 22; *ante*, pp. 30-31; 14-16.]

B. Without further elaborating it at this time, it is submitted that this question is one of very great importance, which apparently has not been directly decided by this Court, but should be.

C. It is believed perfectly plain that the Congress, in delegating usual taxing powers to the Legislature of Puerto Rico by Section 3 of the Organic Act, intended to grant only such usual taxing powers for governmental purposes as had been ordinarily exercised by State Legislatures; or as this Court said in *People of Puerto Rico v. Shell Company*, 302 U. S. 253, 261, quoting *Maynard v. Hill*, 125 U. S. 190, 204,

"the subjects upon which Legislatures had been in the practice of acting, with the consent and approval of the people they represented".

D. The levying of tremendously increased taxes, away beyond the ordinary governmental needs, shown by the Gov-

ernment's revenues and its budgets [*ante*, pp. 15-16], is plainly not taxation for subjects upon which Legislatures had been in the practice of acting; but is manifestly an attempt to tax for some assumed purposes of "public welfare" not within the usual scope of ordinary governmental purposes.

E. The Congress has not seen fit to delegate to the Legislature of Puerto Rico the power of taxing to "provide for the \* \* \* "general welfare of the United States", which the Congress itself may exercise under the first clause of Section 8 of Article I of the Constitution.

**F. These 1941 amendments to the insular income tax laws, considered as a whole, are confiscatory;** not alone because of the very radical increase made by the Acts of 1941 in the tax liability of everyone in the higher brackets subjected to the income tax; but also, and primarily, because of the discriminatory, as well as unnecessary and unwarranted, great increases in the taxation of alien residents of Puerto Rico; of partners in partnerships; of stockholders of domestic corporations; of non-resident taxpayers [classified again among themselves on the basis of whether or not they are American citizens]; as well as in the taxation of husband and wife living together.

Taking all of these things together, along with the sharp increases made in the graduated scales both of the normal tax and of the surtax for the relatively higher income tax classes, and also against the earnings of corporations and of partnerships,—all of these things taken together, along with the lack of any indication in the annual budgets of any reason for suddenly so requiring such greatly increased taxes against the higher incomes,—these 1941 amendments really amount to confiscation,—or to an attempt to tax for assumed "general welfare" purposes,—[Constitution, Cl. 1, Sec. 8, Art. I],—a power not delayed to the Legislature by the Congress,—rather than to taxation for the usual governmental purposes contemplated in the power delegated by

the Congress to the Legislature of Puerto Rico by Section 3 of the Organic Act [Appendix, *infra*, p. 83] that "taxes and assessments on property, internal revenue, and license fees, and royalties \* \* \* may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico".

As already indicated [*ante*, p. 14] the insular Supreme Court itself recognized (R. 35-39) that there is here a very serious question whether these 1941 amendments can properly be sustained in view of their very manifestly confiscatory character, which is really apparent on their faces. Although upholding them against this charge, that Court appears nevertheless to have done so with considerable hesitation, as above indicated (R. 39; *ante*, quotation, pp. 30-31).

G. *Petitioner respectfully submits, to the contrary, that these very radical amendments do actually "fall on the wrong side of the line"; and are therefore void.*

The rule has been indicated by this Court in its outstanding decision upholding the constitutionality of the federal Income Tax Act of 1913 (*Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 24-25) where it is said that if in any case it should appear that

"although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property, that is a taking of the same in violation of the Fifth Amendment,"—

and that in such a case the Act could not be sustained as a valid exercise of the legislative taxing power.<sup>49</sup>

<sup>49</sup> See also the following cases reaffirming and following *Brushaber v. Union Pacific R. R.*, in this respect: *Nichols v. Coolidge*, 274 U. S. 532, 542; *Blodgett v. Holden*, 275 U. S. 142, 144; *Untermeyer v. Anderson*, 276 U. S. 440; *Hooper v. Tax Commission*, *supra*, 284 U. S. 206, 215; and *Heiner v. Don-*

This is manifestly such a statute.

H. Striking down these 1941 amendments does not seriously affect the financial position of the insular government.

The only result is to leave in effect the former Income Tax Law of 1925, as it stood during the calendar year 1940 when the income here involved accrued and when the income taxes, both of the petitioner and of his wife, were incurred, and paid.

As above indicated (*ante*, pp. 15-16) the insular government's revenues under that former statute were amply sufficient,—taken together with its other sources of revenue,—more than to defray the actual expenses of carrying on the insular government. As there indicated, that government's annual surplus, under those statutes, had been constantly rising for the two preceding years; and was, for the fiscal year 1940-1941, during which these 1941 amendments were enacted by the Legislature, \$4,404,557.09, as of June 30, 1941, as appears in the annual reports of the Auditor of Puerto Rico.

And, further, it appears (*ante*, pp. 15-16) that the annual budget adopted by that same legislature for the following fiscal year 1941-1942, for which provision was being made by these amendments to the tax laws, was only slightly above the budget for the preceding years.

---

*nan*, 285 U. S. 312, 326. In the last case it is said (at p. 326, *supra*).

"That a federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the Fifth Amendment is settled."

### CONCLUSION.

The decision of the Supreme Court of Puerto Rico and that of the Circuit Court of Appeals affirming it were both wrong, and should be reversed. The amendatory Acts of April and May, 1941, were beyond the power of the Legislature and void in the respects hereinbefore indicated; and the later November, 1941, amendments limited the retroactivity of the whole Income Tax Act to the calendar year 1941, so as, in any event, to exclude the 1940 taxes here in question.

And in view of the importance and the seriousness of the questions here presented by this case, it is earnestly believed, and is respectfully submitted, that this case should be reviewed by this Court; and that to that end the writ of certiorari should be granted.

WILLIAM CATTRON RIGBY,  
OSCAR SOUFFRONT,  
J. J. ORTIZ ALIBRAN,  
*Attorneys for Petitioner.*

RIGBY, LEON and WEILL,  
FRED W. LLEWELLYN,  
*Of Counsel.*





## APPENDIX.

### Constitutional and Statutory Provisions.

#### CONSTITUTION :

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

No person shall \* \* \* ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)  
\* \* \*

#### FEDERAL STATUTES :

The Organic Act for Puerto Rico, the "Jones Law", Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides :

Sec. 2. [Par. 1]. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. \* \* \*

[Par. 22]. That the rule of taxation in Porto Rico shall be uniform.

Sec. 3. That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico;  
\* \* \*

Sec. 34. [Par. 9] No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length.

**PUERTO RICO:**

**Civil Code of Puerto Rico. (1930 Ed.).**

**SECTION 3.**—Laws shall not have a retroactive effect unless they expressly so decree.

In no case shall the retroactive effect of a law operate to the prejudice of rights acquired under previous legislative action.

**SECTION 91.**—The husband shall be the administrator of the conjugal property, except when stipulated otherwise.

The purchases made by the wife out of conjugal property shall be valid when the said purchases comprise things or articles for the use of the family, in accordance with their social position.

Nevertheless the real property belonging to the conjugal community may not be alienated or burdened, such a transaction being null, except when effected with the mutual consent of both parties to the marriage.

**SECTION 92.**—(Section 160, Civil Code of 1902, as amended by act of March 10, 1904, page 183.) The husband and wife shall have the right to manage and freely dispose of their respective separate estates.

**SECTION 93.**—The husband is the legal representative of the conjugal community.

**SECTION 95.**—Marriage is dissolved in the following cases:

1. By death of the husband or wife.
2. By divorce legally obtained.
3. If the marriage be declared null.

**SECTION 252.**—The word “property” is applicable in general to anything of which riches or fortune may con-

sist. This word is likewise relative to the word "things", which is the second object of jurisprudence, the rules of which refer to persons, things and actions.

SECTION 1267.—Persons who may be joined in matrimony may, before celebrating it, execute contracts, stipulating the conditions for the conjugal partnership with regard to present and future property, without any other limitations than those mentioned in this Code.

In the absence of contracts relating to property it shall be understood that the marriage has been contracted under the system of legal conjugal partnership.

SECTION 1268.—In the contracts referred to in the preceding section the contracting parties can not stipulate anything contrary to law or morality, nor humiliating to the authority within the family pertaining respectively to the future spouses.

All stipulations not in accordance with the provisions of this section shall be considered void.

SECTION 1295.—By virtue of the conjugal partnership the earnings and profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

SECTION 1296.—The conjugal partnership shall always begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void.

SECTION 1297.—This partnership cannot be renounced during the marriage, except in case of judicial separation.

When the renunciation should take place by reason of a separation, or after the marriage has been dissolved or annulled, said renunciation shall be included in a public instrument, and the creditors shall have the right granted them in section 955.

SECTION 1298.—The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter.

ARTICLE SECOND.—PROPERTY BELONGING TO EACH OF THE SPOUSES.

SECTION 1299.—(Section 1314, Civil Code of 1902, as amended by act of March 12, 1903, page 43.) The following is the separate property of the spouses: 1. That brought to the marriage as his or her own. 2. That acquired by either of them during the marriage by lucrative title, that is to say, by gift legacy or descent. 3. That acquired by right of redemption or by exchange for other property belonging to one of the spouses only. 4. That bought with money belonging exclusively to the wife or to the husband.

SECTION 1301.—To the conjugal partnership belong:

1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only.

2. That obtained by the industry, salaries, or work of the spouses or of either of them.

3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

SECTION 1302.—Whenever a sum or credit, payable in a certain number of years, belongs to one of the spouses, the sum collected for installments due during the marriage shall not be partnership property, but shall be considered as capital of the husband or of the wife, according to whom the credit belongs."

SECTION 1303.—The right to a usufruct or pension, belonging to one of the spouses, either in perpetuity or for life, shall form part of his or her own property; but the fruits, pensions, and interest due, during the marriage, shall be partnership property.

In this provision is included the usufruct which the spouses have in the property of their children, even though they be of another marriage.

SECTION 1304.—The useful expenses made on behalf of the private property of either one of the spouses through advances made by the partnership or by the industry of husband or wife are partnership property.

Buildings constructed during the marriage, on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same.

SECTION 1305.—Whenever the property belonging to the husband or to the wife should consist, in whole or in part, of cattle existing at the time of the dissolution of the partnership, the heads of cattle exceeding the number which were brought to the marriage, shall be considered as partnership property.

SECTION 1306.—The earnings obtained by the husband or wife by gambling, or proceeding from other causes exempt from restitution, shall belong to the conjugal partnership, without prejudice in a proper case, to the provisions of the Penal Code.

SECTION 1307.—All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife.

SECTION 1311.—What has been lost and paid for during marriage by either of the spouses, in any kind of game whatsoever, shall not diminish his or her respective share in the partnership.

Whatever has been lost and not paid for by either of the spouses in illicit games shall be charged to the conjugal partnership.

SECTION 1312.—The husband is the administrator of the conjugal partnership, with the exception of what is prescribed in section 91, chapter III, Title IV, Book first, of this Code.

SECTION 1313.—Notwithstanding the power which the husband has as administrator he shall not have the power to give, sell and to bind for a consideration the real estate of the conjugal partnership, without the express consent of the wife.

Every sale or agreement which the husband may make in respect to the said property in violation of this section and the other provisions of this Code, or in fraud of the wife shall be null and shall not prejudice her or her heirs.

SECTION 1314.—(Section 1329, Civil Code of 1902, as amended by the act No. 48, 1930, p. 368.) Neither husband

nor wife may dispose by will but of his (or her) half of the conjugal partnership.

SECTION 1316.—Upon the dissolution of the partnership an inventory shall immediately be made; but the same shall not be required for the liquidation:

1. When, after the partnership has been dissolved, one of the spouses or his or her legal representatives have at the proper time renounced its effects and consequences.

2. When the separation of the property may have preceded the dissolution of the partnership.

3. In the case to which the second paragraph of the preceding section refers.

In case of renunciation, the right granted creditors by section 955 shall always be reserved.

SECTION 1320.—After the deductions from the inventoried estate specified in the preceding sections have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.

SECTION 1322.—The net remainder of the partnership property shall be divided, share and alike, between the husband and the wife, or their respective heirs.

SECTION 1328.—The husband and the wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or should have given cause for divorce.

In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned.

SECTION 1329.—After the separation of property has been ordered the conjugal partnership shall be dissolved, and its liquidation shall be made according to the provisions of this Code.

Nevertheless, the husband and the wife shall mutually attend to their support during the separation, and to the support of the children, as well as to their education, each one in proportion to his or her respective means.

SECTION 1333.—The administration of the property belonging to the marriage shall be transferred to the wife when her husband is incapacitated or absent.

### **Spanish Civil Code.**

ARTICULO 1415.—El marido podrá disponer de los bienes de la sociedad de gananciales para los fines expresados en el art. 1409. También podrá hacer donaciones moderadas para objetos de piedad o beneficencia, pero sin reservarse el usufructo.

### **Code of Civil Procedure. (1933 Ed.).**

SECTION 248.—(As amended by Act April 16, 1916, page 57)—All real and personal property belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all compensation due or owing (here) for her personal services, is exempt from execution against her husband; but this privilege of exemption shall not extend to the benefits, income and proceeds from the private property of a married woman, one-half the value of the former being subject to an order of execution against the husband.

### **Code of Commerce.**

#### **Title I.—Commercial Companies**

#### **SECTION II. GENERAL COPARTNERS.**

(7686). ART. 127. All the members of the general co-partnership, be they or be they not managing partners of the same, are personally and jointly liable with all their property for the results of the transactions consummated in the name and for the account of the partnership, under the signature of the latter, and by the person authorized to make use thereof.

(7688) ART. 129. If the management of the general co-partnership has not been limited by a special instrument to one of its members, all of them shall have the right to take part in the direction and management of the common business, and the partners present shall come to an agreement with regard to all contracts or obligations in which the company may be interested.

(7690) ART. 131. Should there be partners especially intrusted with the management, the other partners can not oppose nor hinder them in the transaction of the business nor to prevent the effects thereof.

(7692) ART. 133. In general copartnerships all the partners, be they managing partners or not, have a right to examine the condition of the administration and of the bookkeeping and to make the objections which they may consider proper, in accordance with the agreements contained in the articles of copartnership or in the general provisions of law.

(7700) ART. 141. Losses shall be computed in the same proportion among the partners who have contributed the capital, without including those who have not, unless by special agreement the latter have been constituted as participants therein.

### SECTION III. LIMITED COPARTNERSHIPS.

#### [*Sociedad en Comandita*]

(7705) ART. 146. Limited copartnerships must transact business under the name of all the members thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the names or names given, the words "and company" and in all cases the words "limited copartnership."

(7706) ART. 147. This general name shall constitute the firm name, in which there may never be included the names of special partners.

(7707) ART. 148. All the members of the copartnership, be they or be they not managing partners of the limited copartnership, are jointly and severally liable for the results of the transactions of the latter in the same manner and to the same extent as in the general copartnerships, as set forth in article 127.

They shall furthermore have the same rights and obligations which are prescribed in the foregoing sections for partners in general copartnerships.

The liability of special partners for the obligations and losses of the copartnership shall be limited to the funds which they contributed or bound themselves to contribute

to the limited copartnership, with the exception of the case mentioned in article 147.

Special partners can not take any part whatsoever in the management of the business of the copartnership, not even in the capacity of special agents of the managing partners.

(7709) ART. 150. Special partners can not enquire into the condition and situation of the business of the partnership except at the times and under the penalties prescribed in the articles of copartnership or in additional ones.

#### SECTION IV. CORPORATIONS.

##### [*Sociedad Anónima*]

(7712) ART. 153. The liability of the members of a corporation for the obligations and losses of the same shall be limited to the funds they contribute or bind themselves to contribute to the corporate capital.

(7713) ART. 154. The corporate capital, composed of the funds acquired by the sale of stock and of the accrued profits, shall be liable for the obligations contracted in its management and administration by a person legally authorized therefor and in the manner prescribed in the articles of incorporation, by-laws, or regulations.

(7714) ART. 155. The managers of corporations shall be designated by the members thereof in the manner determined in the articles of incorporation, by-laws, or regulations.

#### Political Code.

##### PROPERTY SUBJECT TO TAXATION.

SECTION 290.—(As amended by Act of Mar. 10, 1904, p. 169):

That all property not expressly exempted from taxation shall be assessed and taxed. For the purposes of the assessment and collection of taxes, real property shall be deemed to be synonymous with immovables as defined in Sections 333, 334 and 335 of the Civil Code: Provided, however, That machinery, vessels, instruments or implements not fixed to the building or soil shall not be deemed to be

real property. Personal property shall include such machinery, vessels, instruments or implements not fixed to the building or soil, livestock, money, whether in the possession of the owner thereof or held by or on deposit with some other person or institution, bonds, stocks, certificates in unincorporated syndicates or partnerships, patent-rights, trade-marks, franchises, concessions and all other matters and things capable of private ownership and not included within the meaning of the term "Real Property", but shall not include book-credits, promissory notes nor other personal credits.

### **Income Tax Act of August 6, 1925, as Amended.**

SECTION 3. (as amended by section 1 of Act No. 2 of May 25, 1939, and as it stood on March 15, 1941) (a) "The term 'taxable year' means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under sections 14 to 30. The term 'fiscal year' shall mean an accounting period of twelve months ending on the last day of any month other than December. The term 'taxable' includes, in the case of a return made for a fraction of a year under the provisions of this title or under regulations prescribed by the Treasurer, the period for which such return has been made. The first taxable year, for the purpose of this Act, shall be calendar year 1939, or any fiscal year ending during the calendar year 1939."

"SECTION 3. (as amended by Sec. 2, Act No. 31, Apr. 12, 1941)—(a) The term 'taxable year' means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 or 30. The term 'fiscal year' shall mean an accounting period twelve (12) months ending on the last day of any month other than December. The term 'taxable year' includes, in the case of a return made for a fraction of a year under the provisions of this title or under regulations prescribed by the Treasurer, the period for which such return has been made. The first taxable year, for the purpose of this Act, shall be the calendar year 1940, or any fiscal year ending during the calendar year 1940."

"SECTION 3.—(as amended by Sec. 1, Act No. 23, Nov. 21, 1941)—(a) The term 'taxable year' means the calendar

year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 to 30. The term 'fiscal year' shall mean an accounting period of twelve (12) months ending on the last day of any month other than December. The term 'taxable year' includes, in the case of a return made for a fraction of a year under the provisions of this title or under regulations prescribed by the Treasurer, the period for which such return has been made. The first taxable year, for the purposes of this Act, shall be the calendar year, 1941, or any fiscal year ending during the calendar year 1941."

SECTION 4.—(as originally enacted, and as it stood Mar. 15, 1941)—(a) The term 'dividend' when used in this title (except when used in paragraph (9) of subdivision (a) of section 32 and paragraph (4) of subdivision (a) of section 43) means any distribution made by a corporation to its shareholders, whether in money or in other property, out of its earnings or profits accumulated after February 28, 1913; and the term "profits" means *any distribution made by a partnership* to its members and participants out of its earnings obtained after February 28, 1913.

"SECTION 4.—(As amended by Section 3 of Act No. 31 of April 12, 1941.—(a) The term 'dividend' when used in this title, except when used in paragraph (8) of subdivision (a) of Section 32 and paragraph (3) of subdivision (a) of Section 43 shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its earnings or profits accumulated after February 28, 1913, or out of the returns, earnings or profits obtained during the taxable year, computed at the close of the taxable year without making any deductions for any distribution made during the taxable year, regardless of what the amount of the earnings, returns, or profits might have been or where at the time the distribution was made. The term 'earnings' shall mean *any share or right to share in a partnership*, which belongs to its partners or participants in each taxable year out of the earnings or profits of any partnership."

SECTION 12. (as amended by section 2, Act No. 2, May 25, 1939, and as it stood March 15, 1941) (a) "There shall be levied, collected and paid for each taxable year on the net income of every individual a normal tax of 6.90 per cent

of the amount of the net income in excess of the credits provided in Section 18; except that in the case of residents of Puerto Rico the rate on the first three thousand (3,000) dollars of said amount in excess shall be 2.30 per cent, and on the following four thousand (4,000) dollars of said amount in excess the rate shall be 4.60 per cent."

"SECTION 12.—(As amended by Section 1 of Act No. 159 of May 13, 1941.—(a) There shall be levied, collected and paid for each taxable year on the net income of every person a resident of Puerto Rico a normal tax of eight (8) per cent of the amount of the net income in excess of the credits provided in Section 18; except that in the case of American citizens, residents of Puerto Rico, the rate on the first three thousand (3,000) dollars of said amount in excess shall be three (3) per cent, and on the following two thousand (2,000) dollars of said amount in excess, the rate shall be five (5) per cent, and on the following two thousand (2,000) dollars of said amount in excess, or, that is: \$5,000 to \$7,000, the rate shall be seven (7) per cent; *Provided*, That said normal tax may also be assessed and collected on the income received by shareholders for dividends; *Provided, further*, That on the income of every person not a resident of Puerto Rico who is not a citizen of Puerto Rico there shall be levied, collected, and paid for each taxable year, a normal tax of ten (10) per cent on the amount of the net income, except that in the case of nonresidents who are American citizens the normal tax shall be eight (8) per cent on the net income, and there shall be levied, in addition, the surtax fixed by Section 13."

SECTION 13.—(As amended by Section 6 of Act No. 31 of April 12, 1941.)—(a) In addition to the normal tax imposed by Section 12 of this Act, there shall be levied, collected, and paid for each taxable year on the net income of every individual a surtax as follows:

"On a net income of up to \$7,000, inclusive, there shall be no surtax; on larger incomes in excess of \$7,000 and not in excess of \$10,000, three (3) per cent on such excess. \$90 on net incomes of \$10,000; and on net incomes in excess of \$10,000 and not in excess of \$14,000, five (5) per cent additional on such excess. \$290 on net incomes of \$14,000; and on net incomes in excess of \$14,000 and not in excess of \$16,000, seven (7) per cent additional on such excess. \$430

on net incomes of \$16,000; and on net incomes in excess of \$16,000 and not in excess of \$18,000, nine (9) per cent additional on such excess. \$610 on net incomes of \$18,000; and on net incomes in excess of \$18,000 and not in excess of \$20,000, ten (10) per cent additional on such excess. \$810 on net incomes of \$20,000; and on net incomes in excess of \$20,000 and not in excess of \$22,000, eleven (11) per cent additional on such excess. \$1,030 on net incomes of \$22,000; and on net incomes in excess of \$22,000 and not in excess of \$24,000, twelve (12) per cent additional on such excess. \$1,270 on net incomes of \$24,000; and on net incomes in excess of \$24,000 and not in excess of \$26,000, thirteen (13) per cent additional on such excess. \$1,530 on net incomes of \$26,000; and on net incomes in excess of \$26,000 and not in excess of \$28,000, fourteen (14) per cent additional on such excess. \$1,810 on net incomes of \$28,000; and on net incomes in excess of \$28,000 and not in excess of \$30,000, fifteen (15) per cent additional on such excess. \$2,110 on net incomes of \$30,000; and on net incomes in excess of \$30,000 and not in excess of \$34,000, sixteen and one-half ( $16\frac{1}{2}$ ) per cent additional on such excess. \$2,770 on net incomes of \$34,000; and on net incomes in excess of \$34,000 and not in excess of \$36,000, seventeen and one-half ( $17\frac{1}{2}$ ) per cent additional on such excess. \$3,120 on net incomes of \$36,000; and on net incomes in excess of \$36,000 and not in excess of \$38,000, eighteen and one-half ( $18\frac{1}{2}$ ) per cent additional on such excess. \$3,490 on net incomes of \$38,000; and on net incomes in excess of \$38,000 and not in excess of \$42,000, twenty (20) per cent additional on such excess. \$4,290 on net incomes of \$42,000; and on net incomes in excess of \$42,000 and not in excess of \$44,000, twenty-one (21) per cent additional on such excess. \$4,710 on net incomes of \$44,000; and on net incomes in excess of \$44,000 and not in excess of \$46,000, twenty-two (22) per cent additional on such excess. \$5,150 on net incomes of \$46,000; and on net incomes in excess of \$46,000 and not in excess of \$52,000, twenty-four (24) per cent additional on such excess. \$6,590 on net incomes of \$52,000; and on net incomes in excess of \$52,000 and not in excess of \$58,000, twenty-six (26) per cent additional on such excess. \$8,150 on net incomes of \$58,000; and on net incomes in excess of \$58,000 and not in excess of \$64,000, twenty-eight (28) per cent additional on such excess. \$9,830 on net incomes of \$64,000; and on net

incomes in excess of \$64,000 and not in excess of \$70,000, thirty (30) per cent additional on such excess. \$11,730 on net incomes of \$70,000; and on net incomes in excess of \$70,000 and not in excess of \$76,000; thirty-two (32) per cent additional on such excess. \$13,690 on net incomes of \$76,000; and on net incomes in excess of \$76,000 and not in excess of \$82,000, thirty-four (34) per cent additional on such excess. \$51,690 on net incomes of \$82,000; and on net incomes in excess of \$82,000 and not in excess of \$88,000, thirty-six (36) per cent additional on such excess. \$17,850 on net incomes of \$88,000; and on net incomes in excess of \$88,000 and not in excess of \$94,000, thirty-eight (38) per cent additional on such excess. \$20,130 on net incomes of \$94,000; and on net incomes in excess of \$94,000, forty (40) per cent additional on such excess.

SECTION 18. (as it stood March 15, 1940) "For the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as partnership profits or dividends (1) from a domestic corporation or (2) from a foreign corporation when it is shown to the satisfaction of the Treasurer that more than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within Porto Rico as determined under the provisions of section 19;

(b) The amount received as interest upon the obligations of the United States, the obligations of The People of Porto Rico or of any political subdivision thereof, which is included in gross income under section 15;

(c) In the case of an unmarried person, a personal exemption of \$1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them;

(d) \$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under twenty-one years of age or is incapable of self-support because mentally or physically defective;

(e) In the case of a nonresident individual not a citizen of Porto Rico the personal exemption shall be only \$1,000. The credit provided in subdivision (d) shall not be allowed in the case of a nonresident individual not a citizen of Porto Rico;

(f) (1) The credits allowed by subdivisions (d) and (e) of this section shall be determined by the civil status of the taxpayer on the last day of his taxable year;

(2) The credit allowed by subdivision (e) of this section shall, in case the civil status of the taxpayer changes during his taxable year, be the sum of (A) an amount which bears the same ratio to \$1,000 as the number of months during which the taxpayer was unmarried bears to 12 months, plus (B) an amount which bears the same ratio to \$2,500 as the number of months during which the taxpayer was a married person living with husband or wife or was the head of a family bears to 12 months. For the purposes of this paragraph a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

(3) In the case of an individual who dies during the taxable year, the credits allowed by subdivisions (c), (d) and (e) shall be determined by his civil status at the time of his death, and in such case full credits shall be allowed to the surviving spouse, if any, according to his or her civil status at the close of the taxable year."

"SECTION 18.—(As amended by Sec. 10, Act No. 31, Apr. 12, 1941)—For the purpose of the normal tax, there shall be allowed only the following credits:

"(a) The amount received as interest on obligations of the United States, the obligations of The People of Puerto Rico or of any political subdivision thereof, which is included in gross income under section 15;

"(b) In the case of an unmarried person, a personal exemption of 800; or in the case of the head of a family or a

married person living with husband or wife, a personal exemption of \$2,000. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,000.

“(c) Four hundred (400) dollars for each person (other than husband or wife) dependent upon and receiving his support exclusively from the taxpayer if such dependent person is under twenty-one years of age or is incapable of self-support because mentally or physically defective, or is pursuing university studies and until he obtains his university degree, provided the age of the student does not exceed twenty-five years;

“(d) The credit provided for under subdivisions (b) and (c) shall not be allowed in the case of a nonresident individual who is not a citizen of Puerto Rico;

“(e) (1) The credit allowed by subdivision (c) of this section shall be determined by the civil status of the taxpayer on the last day of his taxable year;

“(2) The credit allowed by subdivision (b) of the section shall in case the civil status of the taxpayer changes during his taxable year, be the sum of (A) an amount which bears the same ratio to \$800 as the number of months during which the taxpayer was unmarried bears to 12 months, plus (B) an amount which bears the same ratio to \$2,000 as the number of months during which the taxpayer was a married person living with husband or wife, or was the head of a family, bears to 12 months. For the purposes of this paragraph a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month”;

“SECTION 15.—For the purpose of this title, except as otherwise provided in section 31:

(a) The term “gross income” includes gains, profits and income derived from salaries, wages, or compensation for personal services (including in the case of the officers and employees of the People of Puerto Rico or of any political subdivision thereof, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property whether real or personal growing out

of the ownership or use of or interest in such property; also from interest, rent, dividends, partnership profits, securities, or the transaction of any business carried on for gain or profit or gains or profits and income derived from any source whatever; Provided, That in case of the sale outside of Puerto Rico of fruits, products or manufactures harvested, produced or manufactured in Puerto Rico, the selling price, for the purposes of this Act, may be computed by the Treasurer on the basis of the market price in the Island on the date of shipment of said fruits, products or manufactures; Provided, further, That when the Treasurer of Puerto Rico experiences difficulty in determining said market value in the Island, he may use market quotations for the date of shipment in the countries where such sales are made, his information to be obtained from the best sources available to him, and the expenses actually paid or incurred in the transportation of said fruits, products or manufactures shall be given due regard by the Treasurer in determining said selling price. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted under subdivision (b) of section 14, any such amounts are to be properly accounted for as of a different period."

SECTION 24.—(as originally enacted, and as it stood March 15, 1941)—(a) The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

(1) Every individual having a net income for the taxable year of \$1,000 or over if unmarried, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income.

(b) If a husband and wife living together have an aggregate net income for the taxable year of \$2,500, or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income."

SECTION 24.—(as amended by Act No. 31, April 12, 1941)  
—(a) "The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

'(1) Every individual having a net income for the taxable year of \$800 or over if unmarried, or if married and not living with husband or wife;

'(2) Every individual having a net income for the taxable year of \$2,000 or over, if married and living with husband or wife; and

'(3) Every individual having a gross income for the taxable year of \$5,000, or over, regardless of the amount of his net income.

'(b) If a husband and wife living together have a net income for the taxable year of \$2,000, or over, or an aggregate gross income for such year of \$5,000 or over, the total income of both shall be included in a single joint return, and the normal and additional tax shall be computed on the aggregate income. The net or gross income received by anyone of the spouses shall not be divided between them."

\* \* \* \* \*

SECTION 28 (as amended by section 5, Act No. 2, May 25, 1939) "There shall be levied, collected, and paid for each taxable year on the net income of every corporation or partnership a tax of 14.375 per cent on the net income in excess of the credits provided for in Section 34."

SECTION 28. (as amended by section 14, Act No. 31, April 12, 1941)—(a) There shall be levied, collected, and paid for each taxable year on the net income of every corporation or partnership a tax of nineteen (19) per cent on the net income in excess of the credits provided for in Section 34, except that domestic corporations and partnerships shall pay a tax of seventeen (17) per cent."

SECTION 56.—As used in this title the term “deficiency” means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

SECTION 57.—(a) If, in the case of any taxpayer, the Treasurer determines that there is a deficiency in respect of the tax imposed by this title, the taxpayer, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided. Within 30 days after such notice is mailed the taxpayer may file an appeal with the Board of Review and Equalization, alleging in writing and under oath the legal facts and grounds on which such appeal is based.



26

Office - Supreme Court, U. S.  
FILED  
AUG 13 1944  
CHARLES ELMORE GRIFFLEY  
CLERK

No. 227

---

---

**In the Supreme Court of the United States**

OCTOBER TERM, 1944

---

**FRANCISCO BALLESTER-RIPOLL, PETITIONER**

**v.**

**COURT OF TAX APPEALS OF PUERTO RICO ET AL.**

---

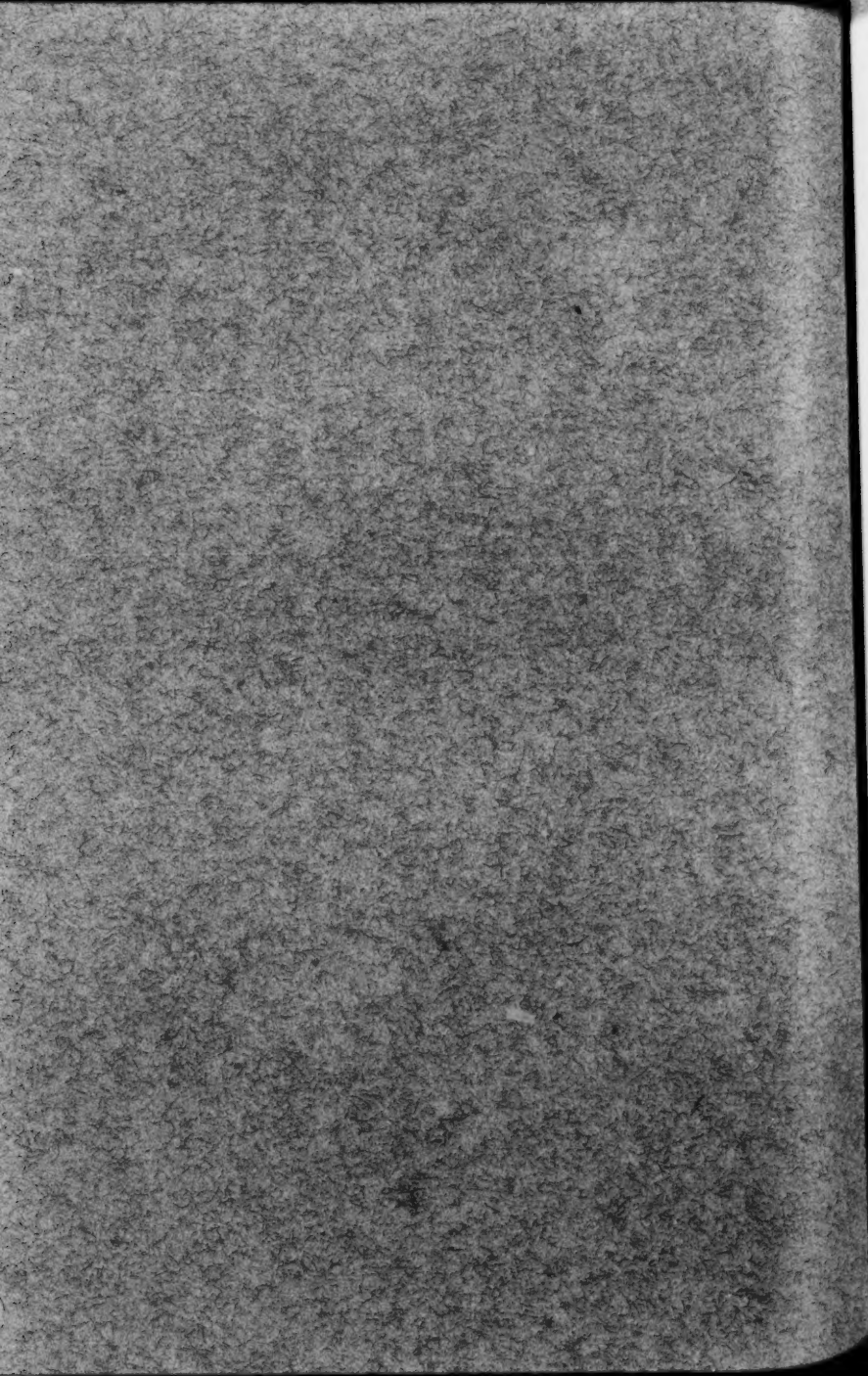
**ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST  
CIRCUIT**

---

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

---

---



# INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	14
Appendix	15

## CITATIONS

### Cases:

<i>Bonet v. Yabucoa Sugar Co.</i> , 306 U. S. 505	11, 12
<i>Brushaber v. Union Pac. R. R.</i> , 240 U. S. 1	5
<i>De Castro v. Board of Commissioners of San Juan</i> , decided May 29, 1944	11
<i>Diaz v. Gonzalez</i> , 261 U. S. 102	10
<i>Dorchy v. Kansas</i> , 264 U. S. 286	12
<i>Fidelity &amp; Columbia Tr. Co. v. Louisville</i> , 245 U. S. 54	11
<i>Gallardo v. Porto Rico Ry., Light &amp; Power Co.</i> , 18 F. 2d 918	6
<i>Kepner v. United States</i> , 195 U. S. 100	6
<i>Knowlton v. Moore</i> , 178 U. S. 41	5
<i>Mario Mercado e Hijos v. Commins</i> , decided May 29, 1944	11
<i>National City Bank v. De La Torre</i> , 54 P. R. R. 219, on reconsideration, 54 P. R. R. 651, affirmed, 110 F. 2d 976, certiorari denied, 311 U. S. 666	10
<i>Puerto Rico v. Rubert Co.</i> , 315 U. S. 637	11
<i>Puerto Rico v. Russell &amp; Co.</i> , 288 U. S. 476	9
<i>San Juan Trading Co. v. Sancho</i> , 114 F. 2d 969, certiorari denied, 312 U. S. 702	6
<i>Serra v. Mortiga</i> , 204 U. S. 470	6
<i>United States v. Robbins</i> , 269 U. S. 315	10
<i>Waiialua Co. v. Christian</i> , 305 U. S. 91	11
<i>Welch v. Henry</i> , 305 U. S. 134	8

## Statutes:

Laws of Puerto Rico:		Page
Act No. 74 of 1925:		15
Sec. 4.....		6
Sec. 12.....		6
Sec. 13.....		7, 15
Sec. 15.....		7, 16
Sec. 18.....		10, 16
Sec. 24.....		7
Sec. 28.....		
Act No. 31 of 1941:		7, 17
Sec. 1.....		13, 17
Sec. 2.....		7, 18
Sec. 3.....		7, 18
Sec. 5.....		19
Sec. 6.....		7, 21
Sec. 10.....		9, 21
Sec. 13.....		7
Sec. 14.....		21
Sec. 26.....		22
Sec. 27.....		22
Sec. 28.....		13, 22
Sec. 29.....		
Act No. 159 of 1941:		22
Sec. 1.....		12, 23
Sec. 6.....		23
Sec. 7.....		13, 23
Sec. 8.....		
Act No. 23 of 1941, First Special Session:		13, 23
Sec. 1.....		13, 24
Sec. 11.....		
Organic Act of Puerto Rico (Act of March 2, 1917), c. 145,		
39 Stat. 951, as amended:		
Sec. 2 (48 U. S. C. 1940 ed., Sec. 737).....		5, 15
Miscellaneous:		
Constitution of the United States, Art. 1, Sec. 8.....		5

# In the Supreme Court of the United States

OCTOBER TERM, 1944

---

No. 227

FRANCISCO BALLESTER-RIPOLL, PETITIONER

*v.*

COURT OF TAX APPEALS OF PUERTO RICO ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT*

---

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

---

## **OPINIONS BELOW**

The opinion of the Supreme Court of Puerto Rico (R. 8-39 in English translation) is reported in 61 P. R. R. 474 (Spanish edition; advance sheets of May 1, 1943); the opinion of the Circuit Court of Appeals (R. 52-69) is reported in 142 F. (2d) 11.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on April 5, 1944 (R. 69). The petition for a writ of certiorari was filed on July 5, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

All of the questions presented by the petition relate to the construction and validity of certain provisions of the Income Tax Act of Puerto Rico:

1. Whether the progressive rates of taxation imposed by the Act violate the uniformity clause of the Organic Act.
2. Whether the statutory repeal of the credits on the normal tax, formerly allowed for amounts received as dividends from a domestic corporation and as partnership profits, is valid.
3. Whether the statutory provision for a mandatory joint return by husband and wife is valid as applied to community income.
4. Whether the Supreme Court of Puerto Rico properly construed the invalid higher rates for resident aliens as separable from the valid normal tax rates.
5. Whether the Supreme Court of Puerto Rico properly construed the 1941 amendments to apply retroactively to the calendar year 1940.
6. Whether the tax imposed by the 1941 amendments is confiscatory.

## STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 15-24.

## STATEMENT

On March 15, 1941, taxpayer and his wife, residents of Puerto Rico, filed separate income tax returns for the year 1940 under the insular Income Tax Act (R. 8). Each of them reported a net income of \$19,529.45, and paid a tax of approximately \$450 (R. 4-5, 8). Each reported as his separate income one-half of the income received from the same sources (R. 4-5, 8).

Deductions and credits were likewise divided between them (R. 5). In the aggregate they reported a net income of \$39,058.90 and paid taxes totaling \$908.78 (R. 8). On August 18, 1941, the Treasurer of Puerto Rico reliquidated taxpayer's return, pursuant to Acts Nos. 31 and 159 of the Laws of Puerto Rico (1941), consolidated it with that of his wife, and eliminated certain exemptions and credits (R. 3-4, 8). The Treasurer combined the net income reported by taxpayer with that reported by his wife, thereby increasing taxpayer's return from \$19,529.45 to \$39,058.90; he reduced taxpayer's personal exemption (in the aggregate for both spouses) from \$2,500 to \$2,000, and included, for the purposes of both normal and surtax, taxpayer's income from partnership profits and dividends from domestic corporations. The Treasurer also struck out the credit of 25 percent by reason of earned net income and applied the

rates imposed by the Acts Nos. 31 and 159 of 1941. (R. 4.) Accordingly, the Treasurer notified taxpayer that he would be required to pay an additional tax of \$5,661.71, making a total of \$6,570.49 for the year 1940 (R. 2-3, 8). On October 1, 1941, taxpayer filed a complaint in the Court of Tax Appeals alleging that the levying of such tax was void because the procedure was not in accordance with Sections 56 and 57 of Act No. 74 of August 6, 1925, as amended (R. 6). On May 27, 1942, the Court of Tax Appeals decided that it was without jurisdiction to entertain the case, but on certiorari the Supreme Court of Puerto Rico reversed the order of the Court of Tax Appeals and held that the latter court had jurisdiction (*Ballester v. Court of Tax Appeals*, 60 P. R. R. 768 (Spanish edition)), and remanded the case to the Court of Tax Appeals for further proceedings (R. 6). On October 22, 1942, the Court of Tax Appeals decided the case on its merits against the taxpayer, and upheld the tax imposed by the Treasurer (R. 6). On March 9, 1943 (R. 39-40), the Supreme Court of Puerto Rico affirmed the decision of the Court of Tax Appeals upholding the "re-liquidation" by the Treasurer of Puerto Rico of this income tax, except that the decision of the Court of Tax Appeals was modified (R. 39)—

in the sense of ordering \* \* \* that the tax to be paid by petitioner Francisco Bal-

lester-Ripoll be calculated at the same rate as that imposed on resident citizens; \* \* \*.<sup>1</sup>

The taxpayer appealed to the Circuit Court of Appeals for the First Circuit,<sup>2</sup> which affirmed the judgment of the insular Supreme Court (R. 69). The Treasurer did not appeal the modification by the insular Supreme Court of the judgment of the Court of Tax Appeals.

### ARGUMENT

We submit that the decision below is correct and that the questions raised are neither novel nor important.

1. The progressive rates of taxation do not violate the uniformity clause of the Organic Act. Section 2 of the Organic Act (Appendix, *infra*) provides that "the rule of taxation in Puerto Rico shall be uniform." It is well settled that the analogous provisions of Article 1, section 8, of the Federal Constitution that "all Duties, Imposts, and Excises shall be uniform throughout the United States," requires only geographical uniformity. *Knowlton v. Moore*, 178 U. S. 41, 92; *Brushaber v. Union Pac. R. R.*, 240 U. S. 1, 24.

<sup>1</sup> Taxpayer was a citizen of Spain at the time the tax was imposed, and is now a citizen of the United States and Puerto Rico, domiciled in Puerto Rico (R. 2).

<sup>2</sup> The case was submitted to the court below upon an agreed statement (R. 2-44) approved by the Supreme Court of Puerto Rico (R. 44).

It is equally clear that when Congress incorporated the requirement of uniformity in the Organic Act, it intended the same meaning that had always been attributed to it in the Constitution. *Kepner v. United States*, 195 U. S. 100, 124; *Serra v. Mortiga*, 204 U. S. 470, 474; *San Juan Trading Co. v. Sancho*, 114 F. 2d 969, 972 (C. C. A. 1st), certiorari denied, 312 U. S. 702; *Gallardo v. Porto Rico Ry., Light & Power Co.*, 18 F. 2d 918, 923 (C. C. A. 1st).

The consistent legislative and administrative construction since the original enactment of the income tax in Puerto Rico supports the decision below. The provisions for progressive rates are not new; they were not added by the 1941 amendments, which merely altered the rates. On the contrary, they were part of the Insular Income Tax Act as originally enacted,<sup>3</sup> and have been in effect continuously since 1925. Their validity has not previously been questioned, although they have been applied to thousands of taxpayers. Clearly, denial to the insular legislature of authority to provide for progressive rates of income taxation would effectively preclude enactment of an equitable tax based upon ability to pay.

2. The amendments repealing the credits on the normal tax formerly allowed for amounts received as dividends from a domestic corporation and as partnership profits are valid. The Income Tax

<sup>3</sup> Section 12 and 13 of Act No. 74, of August 6, 1925.

Act at all times since its enactment in 1925 has included "dividends" and "partnership profits" in "gross income."<sup>4</sup> However, for purposes of computing the normal tax, a credit was allowed individuals with respect to these two items of income.<sup>5</sup> These sources of income have always remained subject to the surtax.

The 1941 amendments, the validity of which is attacked here, repealed this credit on the normal tax,<sup>6</sup> added a provision that "said normal tax may also be assessed and collected on the income received by shareholders for dividends,"<sup>7</sup> and broadened to some extent the definitions of "partnership"<sup>8</sup> and earnings of partnerships.<sup>9</sup> Beginning with the enactment of the Income Tax Act in 1925, the tax had also been levied upon the income of corporations and partnerships themselves, as distinguished from their stockholders or partners;<sup>10</sup> the amendments of 1941 changed this provision merely by increasing the rate.<sup>11</sup>

<sup>4</sup> Section 15 (a), Act No. 74, Laws, 1925 (Appendix, *infra*, pp. 15-16).

<sup>5</sup> Section 18 (a), Act No. 74, Laws, 1925 (Appendix, *infra*, p. 16).

<sup>6</sup> Section 10, Act No. 31, Laws, 1941 (Appendix, *infra*, p. 21).

<sup>7</sup> Section 5, Act No. 31, Laws, 1941 (Appendix, *infra*, pp. 18-19).

<sup>8</sup> Section 1, Act No. 31, Laws, 1941, amending Section 2 (a), Act No. 74, Laws, 1925 (Appendix, *infra*, p. 17).

<sup>9</sup> Section 3, Act No. 31, Laws, 1941, amending Section 4 (a), Act No. 74, Laws, 1925 (Appendix, *infra*, p. 18).

<sup>10</sup> Section 28, Act No. 74, Laws, 1925.

<sup>11</sup> Section 14, Act No. 31, Laws, 1941.

Taxpayer contends that these amendments are invalid as "double taxation," and that they violate the uniformity provisions of the Organic Act (Br. 60-64). Here, too, the allegedly illegal exercise of legislative power has remained in force for a period of over fifteen years. The substantial effect of the amendments is merely to apply to a lower bracket, namely, the normal tax, the tax on dividends and partnership profits which has always been collected as part of the surtax. The insular Supreme Court characterized taxpayer's contention in this regard as "frivolous" (R. 23), and the Circuit Court of Appeals found "no merit" in the contention (R. 66-67). *Welch v. Henry*, 305 U. S. 134, 143-144.

Similarly, the taxation of the partnership profits to the individual taxpayer, in addition to their taxation to the partnership itself, is clearly valid. "Partnership" is not here used in the common law sense. It is the rendering into English of *sociedad*, which the insular Supreme Court has held to be "a juridical person apart from the members thereof," and has ruled that to assimilate the *sociedad* with a common law partnership of the character with which the federal income tax acts are concerned is "to invoke a false analogy" (R. 24). The nature of the *sociedad*, and whether it exists as a juridical person apart from its members, present questions of local law; and the Circuit Court of Appeals properly ruled that the

insular court in so holding was not demonstrably wrong (R. 67). *Puerto Rico v. Russell & Co.*, 288 U. S. 476, 481.

3. The Circuit Court of Appeals did not err in sustaining the decision of the insular Supreme Court holding the statutory provision for a mandatory joint return by husband and wife valid as to community income. Section 13 of Act No. 31, Laws of Puerto Rico (1941), amending Section 24 (b) of Act No. 74, Laws of Puerto Rico (1925), provides that:

If a husband and wife living together have a net income for the taxable year of \$2,000, or over, or an aggregate gross income for such year of \$5,000 or over, the total income of both shall be included in a single joint return, and the normal and additional tax shall be computed on the aggregate income. The net or gross income received by any one of the spouses shall not be divided between them.

Prior to the amendment, Section 24 (b) of the statute gave a husband and wife living together the option of making a separate or joint return. Taxpayer contended below that under the community property law of Puerto Rico the income for 1940 was owned separately by his wife and by him, and that the mandatory joint return prescribed by Section 24 (b) of the Income Tax Act, as amended, deprived him of property without due process of law in that it compelled him to pay

taxes on income belonging to his wife. The insular Supreme Court examined the Puerto Rican local community property law with reference to the nature of the interest of the wife during coverture in the community property and its income (R. 10-14, 19-20), and held that under the local law the wife has no vested interest in the community property income, *United States v. Robbins*, 269 U. S. 315 (R. 13-14) and that the husband is therefore taxable on all of the community property income. The insular Supreme Court further held that to provide by statute for a joint return under these circumstances is "merely to bring income tax law in line with our traditional community property concepts" (R. 20).

The nature and extent of the interest of the wife in community property income is plainly a question of local law, involving consideration of the "varying emphasis, tacit assumptions, unwritten practices," within the peculiar competence of the territorial court. *Diaz v. Gonzalez*, 261 U. S. 102, 105-106; *National City Bank v. De La Torre*, 54 P. R. R. 219, 223, 224, on reconsideration, 54 P. R. R. 651, 654, 655, affirmed, 110 F. 2d 976, 983 (C. C. A. 1st), certiorari denied, 311 U. S. 666. This Court has only recently reaffirmed the established principle applied by the Circuit Court of Appeals in the present case (R. 62) that a judgment of the Supreme Court of Puerto Rico on a question of local law will not be reversed unless

it "does violence to recognized principles of local law or established practices of the local community." *De Castro v. Board of Commissioners of San Juan*, decided May 29, 1944, No. 349, Oct. Term, 1943, slip opinion, p. 4; *Mario Mercado e Hijos v. Commins*, decided May 29, 1944, No. 497, Oct. Term, 1943; *Puerto Rico v. Rubert Co.*, 315 U. S. 637; *Bonnet v. Yabucoa Sugar Co.*, 306 U. S. 505; *Waidlua Co. v. Christian*, 305 U. S. 91, 109; *Fidelity & Columbia Tr. Co. v. Louisville*, 245 U. S. 54, 59-60.

4. The Circuit Court of Appeals did not err in upholding the decision of the insular Supreme Court construing the invalid higher rates for resident aliens as separable from the valid normal tax rates. The insular Supreme Court held invalid, as in violation of the equal protection clause and the uniformity clause of the Organic Act, the imposition of a higher tax rate on the income of resident aliens than on the income of resident citizens (R. 24-29). No appeal was taken on behalf of Puerto Rico from this ruling. The insular Supreme Court further held that its ruling did not nullify the entire tax imposed on taxpayer, and that he is entitled only to uniformity or equal protection, i. e., that his tax should be calculated at the same rate as that of resident citizens (R. 29).

Whether the invalid portion is severable from the valid is clearly a question of legislative intention, and like other questions of interpretation of

local statutes, rests primarily with the local court. *Dorchy v. Kansas*, 264 U. S. 286, 290-291. Taxing acts of Puerto Rico are "purely local" and the "traditional reluctance" of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. *Bonet v. Yabucoa Sugar Co.*, 306 U. S. 505, 510. The decision of the local court will not be reversed unless it cannot be supported by logic and reason. The Circuit Court of Appeals was clearly entitled to find that the insular court made a permissible construction of the Act (R. 66).

The courts below construed the statute so as to impose the same rate upon noncitizen residents as upon citizen residents, retaining only the distinction between residents and nonresidents. Clearly, the legislature cannot be presumed to have intended to impose no tax whatsoever under this section in the event the discriminatory rate against aliens should be held ineffective. In fact, the legislature explicitly provided against such a construction.<sup>12</sup> The invalidity of the larger tax rate imposed upon alien residents is of small practical importance; on the other hand, the consequence of invalidating the entire normal tax, as taxpayer contends, would entail financial difficul-

---

<sup>12</sup> Section 6, Act No. 159, Laws, 1941, provides as follows:

"SECTION 6. If any provision of this Act or the application thereof to any person or circumstance is declared void, the rest of the Act, and the application of said provision to other persons or circumstances, shall not be affected."

ties of the most serious character for the insular government and population.

5. The Circuit Court of Appeals did not err in holding that the Supreme Court of Puerto Rico correctly construed the 1941 amendments to apply retroactively to the calendar year 1940. The notice addressed by the Treasurer of Puerto Rico to taxpayer reliquidating the income taxes for the calendar year 1940 was dated and received in August, 1941 (R. 2). In levying taxes for 1940 the Treasurer applied the rates imposed by Acts Nos. 31 and 159 of 1941 (R. 4) which had been enacted in April and May, respectively, of 1941. These amendatory Acts were expressly made retroactive to January 1, 1940, and applicable to the calendar year 1940.<sup>13</sup> Thereafter, on October 1, 1941, taxpayer commenced the present suit by filing a complaint with the Court of Tax Appeals (R. 6). While this proceeding was pending the insular legislature enacted Act No. 23 of the First Special Session of 1941, approved November 21, 1941. Taxpayer contends that Sections 1 and 11 of Act No. 23 (see Appendix, *infra*, pp. 23-24) in effect repeal the provisions of Acts Nos. 31 and 159 of April and May, 1941, which made them retroactive through the year 1940, and instead cause them to be effective only commencing January 1, 1941 (Br. 75-78). No reason is advanced by taxpayer to justify attribution of such an ex-

---

<sup>13</sup> Sections 2 and 29, Act No. 31, Laws, 1941; Section 8, Act No. 159, Laws, 1941 (Appendix, *infra*, pp. 17-18, 22, 23).

traordinary intention to the legislature, and the Supreme Court of Puerto Rico stated that it was "unable to follow the petitioner in his contention" (R. 29). Since the local court's construction was not palpably erroneous, the court below properly sustained its ruling in this respect (R. 68).

6. The tax imposed by the 1941 amendments plainly is not confiscatory. This tax was not imposed upon Puerto Ricans by an outside authority, but by their own elected representatives. The local Supreme Court declared that to sustain taxpayer's contention in this regard would require "a touch of arrogance" on its part (R. 39), and the court below held that the insular court was obviously correct in ruling that the tax of about \$6,500 on approximately \$39,000 of net income was not objectionable as confiscation under the guise of taxation (R. 69).

#### CONCLUSION

The decision of the court below is correct, and no question warranting further review is presented. It is respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,

*Solicitor General.*

SAMUEL O. CLARK, Jr.,

*Assistant Attorney General.*

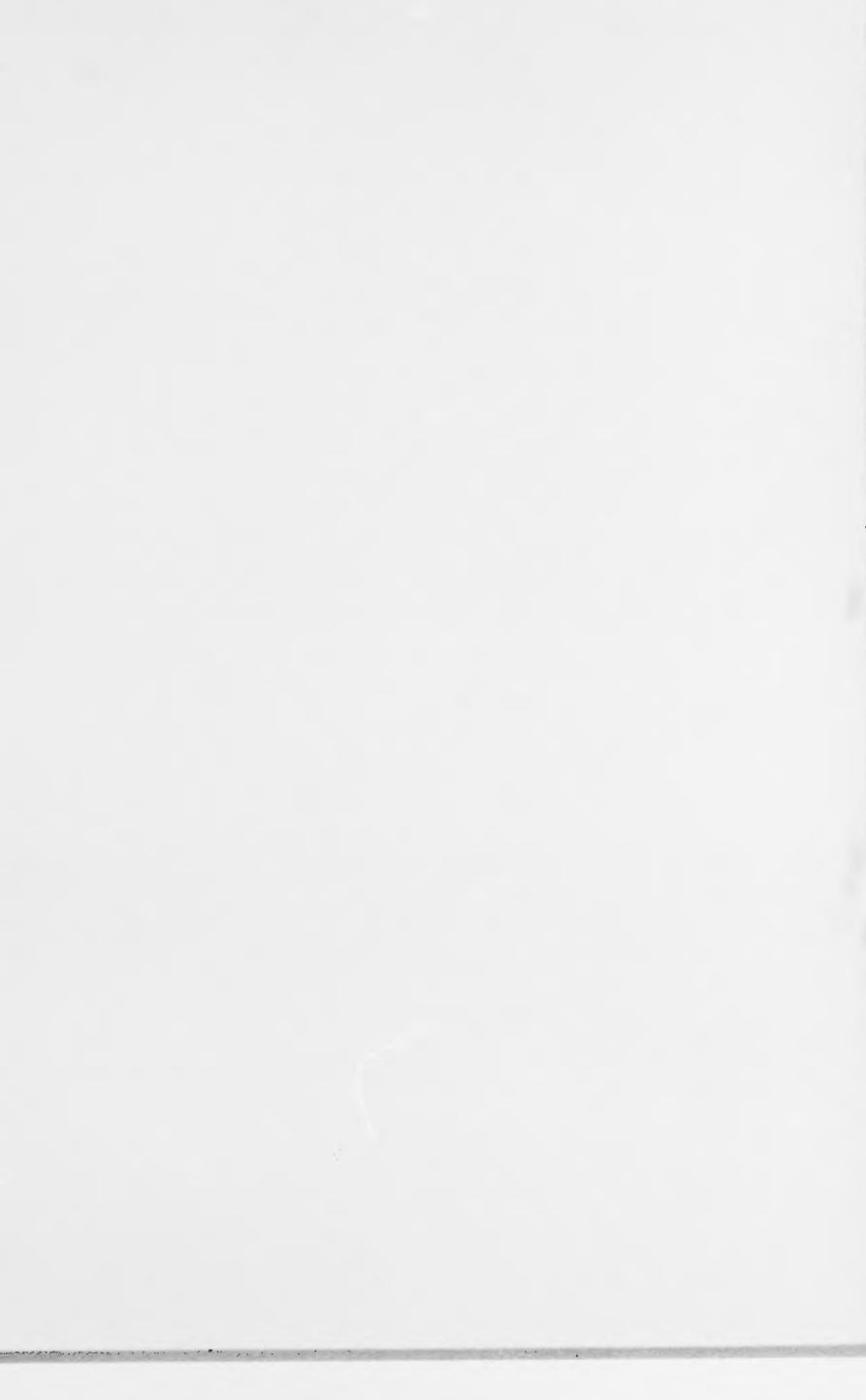
SEWALL KEY,

I. HENRY KUTZ,

*Special Assistants to the Attorney General.*

AUGUST 1944.





## APPENDIX

Organic Act of Puerto Rico (Act of March 2, 1917), c. 145, 39 Stat. 951, as amended by the Act of May 17, 1932, c. 190, 47 Stat. 158:

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

\* \* \* \* \*

That the rule of taxation in Puerto Rico shall be uniform.

\* \* \* \* \*

(48 U. S. C., 1940 ed., Sec. 737.)

Laws of Puerto Rico (1925):

Act No. 74, approved August 6, 1925.

Section 4.—(a) The term “dividend” when used in this title (except when used in paragraph (9) of subdivision (a) of section 32 and paragraph (4) of subdivision (a) of section 43 means any distribution made by a corporation to its shareholders, whether in money or in other property, out of its earnings or profits accumulated after February 28, 1913; and the term “profits” means any distribution made by a partnership to its members and participants out of its earnings obtained after February 28, 1913.

\* \* \* \* \*

Section 15.—For the purposes of this title, except as otherwise provided in section 31—

(a) The term "gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the officers and employees of The People of Porto Rico or of any political subdivision thereof, the compensation received as such), of whatever kind and in whatever form paid, or from profession, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, partnership profits, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever; \* \* \*.

\* \* \* \*

Section 18.—For the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as partnership profits or dividends (1) from a domestic corporation \* \* \*;

\* \* \* \*

Section 24.—(a) The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

\* \* \* \*

(b) If a husband and wife living together have an aggregate net income for the taxable year of \$2,500, or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

\* \* \* \* \*

Laws of Puerto Rico (1941):

Act No. 31, approved April 12, 1941.

Section 1.—Paraphraphs [*sic*] (2) and (3) of subdivision (a) of Section 2 of Act No. 74, entitled “An Act to provide revenues for The People of Porto Rico through the levying of certain income taxes, and for other purposes,” approved August 6, 1925, as amended by Act No. 18, of June 3, 1927; Act No. 30, of April 26, 1932; Act No. 102, of May 14, 1936; Act No. 74, of May 9, 1937 and Act No. 2, of May 25, 1939, are hereby amended as follows:

\* \* \* \* \*

“Section 2.—

“(a)—(3)—The term ‘partnership’ includes civil, business, industrial, agricultural and professional partnerships or of any other kind, whether or not its constitution is set forth by public deed or private document; and it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit.”

Section 2.—Subdivision (a) of Section 3 of said Act is hereby amended as follows:

“Section 3.—(a) The term ‘taxable year’ means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 or 30. The term ‘fiscal year’ shall mean an accounting period of twelve (12) months ending on the last day of any month other than December. The term ‘taxable year’ includes, in the case of

a return made for a fraction of a year under the provisions of this title or under regulations prescribed by the Treasurer, the period for which such return has been made. The first taxable year, for the purpose of this Act, shall be the calendar year 1940, or any fiscal year ending during the calendar year 1940."

Section 3.—Subdivision (a) of Section 4 of said Act is hereby amended as follows:

"Section 4.—(a) The term 'dividend' when used in this title, except when used in paragraph (8) of subdivision (a) of section 32 and paragraph (3) of subdivision (a) of Section 43 shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its earnings or profits accumulated after February 28, 1913, or out of the returns, earnings or profits obtained during the taxable year, computed at the close of the taxable year without making any deductions for any distribution made during the taxable year, regardless of what the amount of the earnings, returns, or profits might have been or where at the time the distribution was made. The term 'earnings' shall mean any share or right to share in a partnership, which belongs to its partners or participants in each taxable year out of the earnings or profits of any partnership."

\* \* \* \* \*

Section 5.—Subdivision (a) of section 12 of said Act is hereby amended to read as follows:

"Section 12.—(a) There shall be levied, collected and paid for each taxable year on the net income of every citizen of Puerto Rico a normal tax of eight (8) percent of

the amount of the net income in excess of the credits provided in Section 18; except that in the case of residents of Puerto Rico the rate on the first three thousand (3,000) dollars of said amount in excess shall be three (3) percent, and on the following two thousand (2,000) dollars of said amount in excess, the rate shall be five (5) percent, and on the following two thousand (2,000) dollars of said amount in excess, or, that is; \$5,000 to \$7,000, the rate shall be seven (7) percent; *Provided*, That said normal tax may also be assessed and collected on the income received by shareholders for dividends; *Provided, further*, That on the income of every person not a resident of Puerto Rico who is not a citizen of Puerto Rico there shall be levied, collected, and paid for each taxable year, a normal tax of ten (10) percent on the amount of the net income, and there shall be levied, in addition, the surtax fixed by Section 13."

Section 6.—Subdivision (a) of Section 13 of said Act is hereby amended as follows:

"Section 13.—(a) In addition to the normal tax imposed by Section 12 of this Act, there shall be levied, collected, and paid for each taxable year on the net income of every individual a surtax as follows:

"On a net income of up to \$7,000, inclusive, there shall be no surtax; on larger incomes in excess of \$7,000 and not in excess of \$10,000, three (3) percent of such excess.

"\$90 on net incomes of \$10,000; and on net incomes in excess of \$10,000 and not in excess of \$14,000, five (5) percent additional on such excess.

"\$290 on net incomes of \$14,000; and on net incomes in excess of \$14,000 and not in

excess of \$16,000, seven (7) percent additional on such excess.

“\$430 on net incomes of \$16,000; and on net incomes in excess of \$16,000 and not in excess of \$18,000, nine (9) percent additional on such excess.

“\$610 on net incomes of \$18,000; and on net incomes in excess of \$18,000 and not in excess of \$20,000, ten (10) percent additional on such excess.

“\$810 on net incomes of \$20,000; and on net incomes in excess of \$20,000 and not in excess of \$22,000, eleven (11) percent additional on such excess.

“\$1,030 on net incomes of \$22,000; and on net incomes in excess of \$22,000 and not in excess of \$24,000, twelve (12) percent additional on such excess.

“\$1,270 on net incomes of \$24,000; and on net incomes in excess of \$24,000 and not in excess of \$26,000, thirteen (13) percent additional on such excess.

“\$1,530 on net incomes of \$26,000; and on net incomes in excess of \$26,000 and not in excess of \$28,000, fourteen (14) percent additional on such excess.

“\$1,810 on net incomes of \$28,000; and on net incomes in excess of \$28,000 and not in excess of \$30,000, fifteen (15) percent additional on such excess.

“\$2,110 on net incomes of \$30,000; and on net incomes in excess of \$30,000 and not in excess of \$34,000, sixteen and one-half ( $16\frac{1}{2}$ ) percent additional on such excess.

“\$2,770 on net incomes of \$34,000; and on net incomes in excess of \$34,000 and not in excess of \$36,000, seventeen and one-half ( $17\frac{1}{2}$ ) percent additional on such excess.

\*

\*

\*

\*

\*

Section 10.—Section 18 of said Act is hereby amended to read as follows:

“Section 18.—For the purpose of the normal tax, there shall be allowed only the following credits:

\* \* \* \* \*

[Subdivision (a) of Section 18 of Act No. 74, approved August 6, 1925, *supra*, is repealed by this amendment.]

\* \* \* \* \*

Section 13.—Subdivisions (a) and (b) of Section 24 of said Act, are hereby amended to read as follows:

“Section 24.—(a) The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

\* \* \* \* \*

“(b) If a husband and wife living together have a net income for the taxable year of \$2,000, or over, or an aggregate gross income for such year of \$5,000 or over, the total income of both shall be included in a single joint return, and the normal and additional tax shall be computed on the aggregate income. The net or gross income received by anyone of the spouses shall not be divided between them.”

\* \* \* \* \*

Section 26.—Every person required to make a return in accordance with the provisions of this Act, as amended, and every person who, for any reason, may have failed to make his return on March 15, 1941, in spite of the fact that he was so required under the Act in force on that date, may make his return within the thirty (30) days following the effective

date of this Act and pay the tax corresponding to the taxable year of 1940, and, upon so doing, he shall not incur the penalties prescribed in the first paragraph of subdivision (2) of Section 77 of this Act.

Section 27.—If any provision of this Act, or the application thereof to any person or circumstance, is held to be invalid, the remainder of the Act and the application of said provision to other persons or circumstances shall not be affected.

Section 28.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 29.—It is hereby declared that there exists a necessity and an emergency for the retroactivity of this Act, and the same shall take effect ninety days after its approval, which shall take effect from and after January 1, 1940.

#### Laws of Puerto Rico (1941):

Act No. 159, approved May 13, 1941.

Section 1.—Section 12 of Act No. 74 entitled "An Act to provide revenues for The People of Porto Rico through the levying of certain income taxes, and for other purposes," approved August 6, 1925, as subsequently amended, is hereby drafted as follows:

"Section 12.—(a) There shall be levied, collected and paid for each taxable year on the net income of every person a resident of Puerto Rico a normal tax of eight (8) percent of the amount of the net income in excess of the credits provided in Section 18; except that in the case of American citizens, residents of Puerto Rico, the rate on the first three thousand (3,000) dollars of said amount in excess shall be three (3) percent, and on the following two thousand (2,000)

dollars of said amount in excess, the rate shall be five (5) percent, and on the following two thousand (2,000) dollars of said amount in excess, or, that is; \$5,000 to \$7,000, the rate shall be seven (7) percent; *Provided*, That said normal tax may also be assessed and collected on the income received by shareholders for dividends; *Provided, further*, That on the income of every person not a resident of Puerto Rico who is not a citizen of Puerto Rico there shall be levied, collected, and paid for each taxable year, a normal tax of ten (10) percent on the amount of the net income, except that in the case of nonresidents who are American citizens the normal tax shall be eight (8) percent on the net income, and there shall be levied, in addition, the surtax fixed by Section 13."

\* \* \* \* \*

Section 6.—If any provision of this Act or the application thereof to any person or circumstance is declared void, the rest of the Act, and the application of said provision to other persons or circumstances, shall not be affected.

Section 7.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 8.—It is hereby declared that there exists a necessity and an emergency for the retroactivity of this Act, and the same shall take effect ninety days after its approval, which shall take effect from and after January 1, 1940.

Laws of Puerto Rico, First Special Session (1941):

Act No. 23, approved November 21, 1941.

Section 1.—Subdivision (a) of Section 3 of Act No. 74, entitled "An Act to provide

revenues for The People of Porto Rico through the levying of certain income taxes, and for other purposes," approved August 6, 1925, as amended by Act No. 18 of June 3, 1927, Act No. 30 of April 26, 1932, Act No. 102 of May 14, 1936, Act No. 74 of May 9, 1937, Act No. 2 of May 25, 1939, Act No. 31 of April 12, 1941, and Act No. 159 of May 13, 1941, is hereby amended as follows:

"Section 3—(a) The term 'taxable year' means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 or 30. The term 'fiscal year' shall mean an accounting period of twelve (12) months ending on the last day of any month other than December. The term 'taxable year' includes, in the case of a return made for a fraction of a year under the provisions of this title or under regulations prescribed by the Treasurer, the period for which such return has been made. The first taxable year, for the purposes of this Act, shall be the calendar year 1941, or any fiscal year ending during the calendar year 1941."

\* \* \* \* \*

Section 11.—It is hereby declared that there exist a necessity and emergency for the retroactivity of this Act, and it shall take effect ninety (90) days after its approval which shall take effect from and after January 1, 1941.





(27)

U.S. SUPREME COURT  
FILED

SEP 20 1944

CHARLES HENRY GUNLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

No. 227.

FRANCISCO BALLESTER-RIPOLL, *Petitioner*,

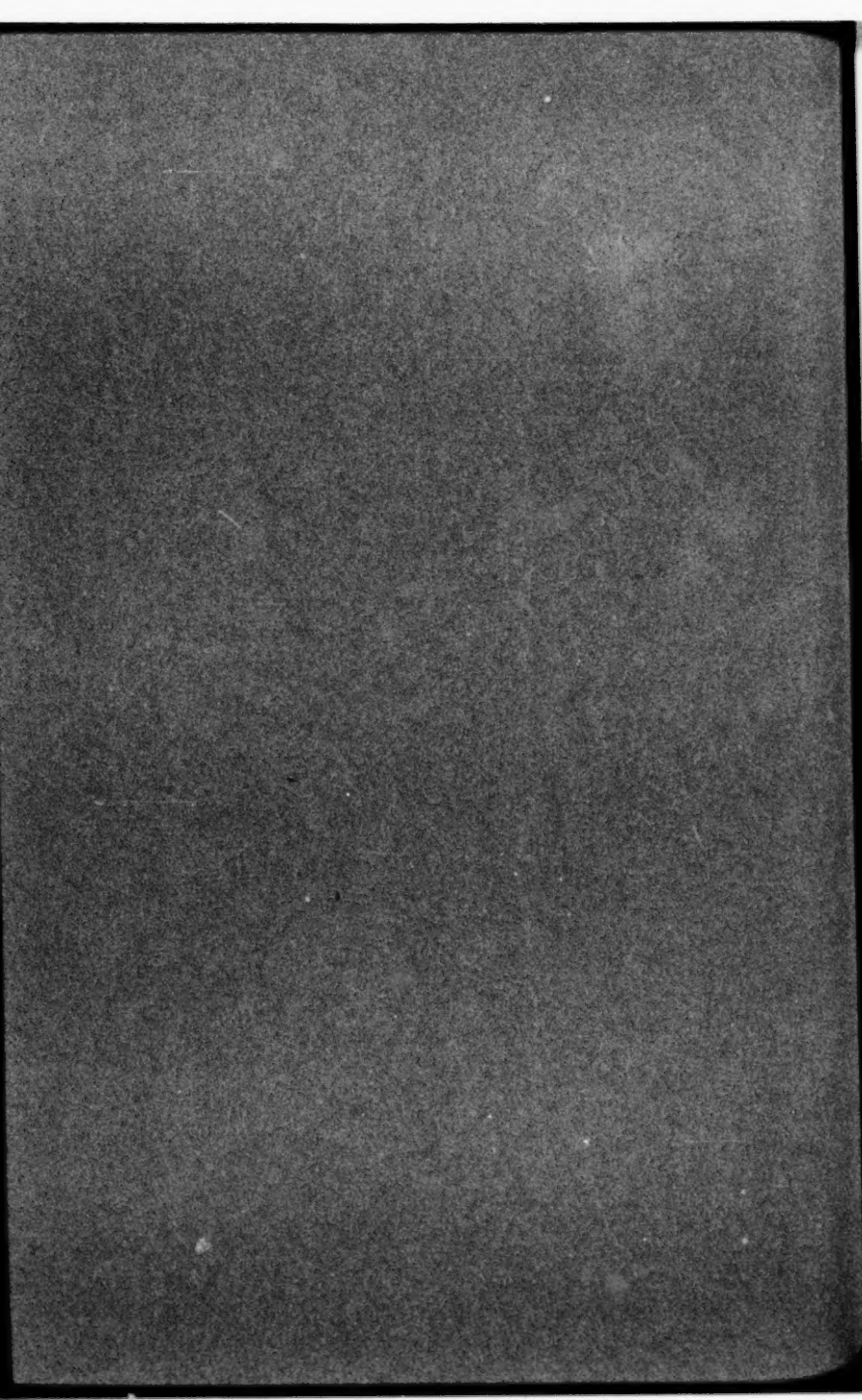
v.

COURT OF TAX APPEALS OF PUERTO RICO, et al., *Respondents*.

REPLY BRIEF FOR PETITIONER, IN REPLY TO THE  
"BRIEF FOR THE RESPONDENT IN OPPOSITION."

WILLIAM CATTROE RIGBY,  
OSCAR SOUFFRONT,  
J. J. OWEN ALLEN,  
*Attorneys for Petitioner.*

RIGBY, LISON and WHEAT,  
FRED W. LAWRENCE,  
*Of Counsel.*



# SUBJECT INDEX.

	Page
Introductory . . . . .	1-2
Concerning Points I and II of our Supporting Brief. .	2-10
Concerning Points III and IV . . . . .	11
Concerning Point V . . . . .	11-18
Concerning Point VI . . . . .	19-20
Concerning Point VII . . . . .	20-21
Concerning Point VIII . . . . .	21-22
Conclusions . . . . .	22-23

## TABLE OF CASES.

Bender v. Pfaff, 282 U. S. 127 . . . . .	13
Brushaber v. Union Pac. R. R., 240 U. S. 1, 24. . . . .	4
Casal v. Sancho Bonet, Treasurer, 53 P. R. Rep. 609. . .	13
De Castro v. Board of Commissioners of San Juan. .	12, 18
Domenech v. Havemeyer, 49 F. (2d) 849. . . . .	8
Dorchy v. Kansas, 264 U. S. 286 . . . . .	19
Eliasberg Bros. Mere. v. Grimes . . . . .	10
Goodell v. Koch, 282 U. S. 118. . . . .	13
Hoeper v. Wisconsin Tax Commission, 284 U. S. 206. .	16
Hopkins v. Bacon, 282 U. S. 122. . . . .	13
Kepner v. United States, 195 U. S. 100 . . . . .	5
Knowlton v. Moore, 178 U. S. 41 . . . . .	1, 3, 4, 5, 6, 7
Maynard v. Hill, 125 U. S. 190 . . . . .	22
Mario Mercado e Hijos v. Commins. . . . .	12
National City Bank v. De la Torre, 54 P. R. Rep. 651. .	13
People of Puerto Rico v. Shell Company, 302 U. S. 253,	10, 22
Poe v. Seaborn, 282 U. S. 101 . . . . .	13, 14, 15, 16
Porto Rico Telephone Co. v. People of Puerto Rico,	
47 F. (2d) 484 . . . . .	9
Posadas v. National City Bank, 296 U. S. 497. . . . .	20
Sancho Bonet, Treasurer, v. Acevedo Quiles, 93 F. (2d)	
331; 303 U. S. 662; 304 U. S. 588. . . . .	9
Sancho Bonet, Treasurer, v. Valiente, 93 F. (2d) 327;	
303 U. S. 662; 304 U. S. 588. . . . .	9
San Juan Trading Co. v. Sancho Bonet, Treasurer, 114	
F. (2d) 969 . . . . .	8
Serra v. Mortiga, 204 U. S. 470 . . . . .	5
Stewart v. Stewart, 199 California 318 . . . . .	14
Smallwood v. Gallardo, 275 U. S. 56. . . . .	20
United States v. Robbins, 269 U. S. 315. . . . .	14, 15, 16, 17
United States v. Malcolm, 282 U. S. 792. . . . .	14, 16



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

---

No. 227.

---

FRANCISCO BALLESTER-RIPOLL, *Petitioner*,

v.

COURT OF TAX APPEALS OF PUERTO RICO, ET AL., *Respondents*.

---

**REPLY BRIEF FOR PETITIONER, IN REPLY TO THE  
"BRIEF FOR THE RESPONDENT IN OPPOSITION."**

---

The "Brief for the Respondent in Opposition" makes no direct answer to our Petition for Certiorari and Supporting Brief, but is an ably drawn camouflage of the weakness of Respondents' position, belittling and in some cases baldly contradicting our statements and arguments, but without real endeavor to analyze or directly to answer them.

It makes no attempt directly to answer or to discuss our analysis of this Court's decision in *Knowlton v. Moore*; nor those portions of our Petition and Supporting Brief indicating that the community property law question here involved is not purely a question of local Puerto Rican law but is one of federal law, turning upon the insular Su-

preme Court's misunderstanding and misapplication of decisions of this Court; nor that the question of "confiscation" here presented is not merely a question of the amount of the tax but relates to the limitations imposed by the Congress upon the local taxing powers delegated to the insular legislature by Section 3 of the Organic Act; nor the other major propositions stated in the "Questions Presented" in our Petition (pp. 23-31) and the "Argument" (pp. 36-81) in our Supporting Brief.

### Points I and II.

With regard to these two Points of our Supporting Brief (pp. 36-57) and the corresponding first two "Questions Presented" of our Petition (pp. 23-24), Respondents' Brief in Opposition simply ignores the essential central theme of our arguments and discussion. It attempts no direct reply to it whatever.

In those two Points we show that the word "*uniform*", *when used without any qualification or limitation whatever*, as it is in the 22nd paragraph of Section 2 of the Organic Act of Congress for Puerto Rico requiring

"That the rule of taxation in Puerto Rico shall be uniform",

necessarily requires "intrinsic" or "inherent" uniformity; and not merely "geographic uniformity" as was erroneously held by the insular Supreme Court of Puerto Rico affirmed by the Circuit Court of Appeals in this case; and that, therefore, it necessarily follows that the insular Legislature is without power to levy so-called "progressive" income taxes levying progressively higher rates upon higher incomes.

In support of those propositions we cite decisions of the Supreme Courts of five States, holding their respective Legislatures without power to levy progressive taxes under State constitutions containing requirements that taxation

shall be "uniform" or "equal and uniform";<sup>1</sup> and we quote the careful opinion of this Court in *Knowlton v. Moore*, 178 U. S. 41, 83 *et seq.*, in which this court, speaking by Mr. JUSTICE WHITE, specifically recognized the correctness of that rule, and that the word "uniform", when used without qualification in a requirement of uniformity in taxation,<sup>2</sup> forbids progressive taxation; and in which this Court sustained the progressive tax features of the federal inheritance tax law of Congress, *only because of the presence of the qualifying words "throughout the United States"*<sup>3</sup> in the provision concerning "Duties, Imposts and Excises" in the first Clause of Section 8 of Article I of the Constitution.

And we point out further that that leading decision of this Court was handed down on May 14, 1900, and has stood unchallenged ever since; and that nearly seventeen years later the Congress enacted the Organic Act for Puerto

---

<sup>1</sup> Alabama; Illinois; Pennsylvania; Tennessee; and Washington. (Our Supporting Brief p. 50.) No contrary decisions have been found; and none are cited by Respondent.

<sup>2</sup> As it is used in this Section 2 of the Organic Act for Puerto Rico.

<sup>3</sup> "The argument to the contrary, whilst conceding that the tax devised by the statute does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions, \* \* \*."

"\* \* \* It is apparent that the controversy cannot be disposed of by mere reference to prior adjudications, \* \* \*. But to determine which view of the cited authorities is the correct one, it will become necessary \* \* \* to elucidate the language of the opinions \* \* \*. We are, moreover, impelled to this course from the fact that *as the word 'uniform', or the words 'equal and uniform', are now generally found in State constitutions, and as there contained have been with practical unanimity interpreted by State courts as applying to the intrinsic nature of the tax and its operation upon individuals, if it be that the words 'uniform throughout the United States,' as contained in the Constitution of the United States, have a different significance, the reason for such conclusion should be carefully and accurately stated.*" (*Knowlton v. Moore*, *supra*, 178 U. S. 41, 84, 87-99; quoted in our Supporting Brief, pp. 38, 39, 42, 45; *Italics supplied.*)

Rico of March 2, 1917, containing in its Section 2 this absolute requirement, without any qualification whatsoever, that the rule of taxation in Puerto Rico shall be "uniform"; and that, in accordance with the established rule, it must be presumed that, in so using that absolute unqualified word "uniform", the Congress intended to use it with the same meaning that had thus been recognized for it by this Court in its decision seventeen years earlier in *Knowlton v. Moore*, as being that which, "with practical unanimity" had been given to it by State courts wherever used in State constitutions, "as applying to the intrinsic nature of the tax and its operation upon individuals."

Further, we point out (Petition, Point I-F, pp. 43-44, and Point II, pp. 54-57), that this is the construction heretofore always given to this provision of the Organic Act, alike by the insular Courts and by the Circuit Court of Appeals of the United States for the First Circuit,—to which Puerto Rican appeals directly go,—apparently without any question whatever until the decision of the insular Supreme Court in the present case; and we there cite the cases upon which we rely for that proposition.

*Respondent's answer as to these two Points.* Respondent makes no attempt whatever to analyze or directly to answer our arguments on either of these two first Points. With regard to them, it says only [*Brief in Opposition*, pp. 5-6]:

"It is well settled that the analogous provisions \* of Article I, Section 8, of the Federal Constitution that 'all Duties, Imposts, and Excises shall be uniform throughout the United States,' requires only geographical uniformity. *Knowlton v. Moore*, 178 U. S. 41, 92; *Brushaber v. Union Pac. R.R.*, 240 U. S. 1, 24. It is equally clear that when Congress incorporated the requirement of uniformity in the Organic Act, it intended the same meaning that had always been attributed to it in the Constitution".

And then they cite in support of that last proposition of theirs (*their second sentence, above*), the very same cases

[*Kepner v. United States*, 195 U. S. 100, 124, and *Serra v. Mortiga*, 204 U. S. 470, 474], which we cite in our Supporting Brief (p. 42), and upon which we rely in support of our proposition that when the Congress, on March 2, 1917, in enacting the Organic Act for Puerto Rico, put into it, in the 22nd paragraph of its Section 2, this unqualified requirement that the rule of taxation in the Island shall be "uniform",—without any limiting qualification at all,—it must necessarily be presumed to have intended to use that unqualified word "uniform" in the same sense in which this Court had said, seventeen years earlier, in *Knowlton v. Moore*, *supra*, that it was "with practical unanimity" interpreted when so used in State constitutions; and that, in view of that clear cut decision of this Court, the Congress when, seventeen years later, it was enacting the Organic Act for the Island, would most surely and certainly,—if it had really intended that the restriction which it was thus imposing concerning the rule of taxation in the Island was to be understood as requiring only "geographical uniformity" throughout the Island,—have clearly expressed such a purpose, by appending to the word "uniform" the phrase "throughout the Island", or some other similar modifying or qualifying phrase substantially modeled upon the phrase, "throughout the United States" used in Clause 1 of Section 8 of Article I of the Constitution, which this Court had so carefully considered and expounded in its opinion in *Knowlton v. Moore*.

Respondent's above quoted statement is really no answer at all; either to our "Point I", or to our "Point II".

In the first place its first sentence wholly misses, or ignores, the entire point of our argument here. It says simply that it is well settled that the "*analogous*" provision of Section 8 of Article I of the Constitution that all duties imposts and excises shall be "*uniform throughout the United States*", requires "*only geographical uniformity*". Nobody questions that, since *Knowlton v. Moore*. But that is no answer to our argument. The provisions of that Sec-

tion of the Constitution, and of the 22nd paragraph of Section 2 of the Organic Act of Puerto Rico, may be "analogous"; but they are not identical.

That there is all the difference in the world between "uniform" (*unqualified*) on the one hand, and "uniform throughout the United States" [or "uniform throughout the Island of Puerto Rico"; or "throughout the Island", or "throughout Puerto Rico"] on the other hand, is the very point of our argument; and is also the very core of Mr. JUSTICE WHITE's opinion and of this Court's decision in *Knowlton v. Moore*. That, on the one hand, the single word "uniform", *unqualified*, imports absolute or "intrinsic" or "inherent" uniformity, commanding that taxes laid under that rule shall, as Mr. JUSTICE WHITE phrased it in *Knowlton v. Moore* (178 U. S. *supra*, at p. 84; quoted in our Supporting Brief, pp. 38-39),

"be equal and uniform in their operation upon persons and property in the sense of the meaning of the words equal and uniform as now found in the constitutions of most of the States of the Union";

whereas, on the other hand, the phrase "*uniform throughout the United States*" is satisfied,—[and the correlative phrase "*uniform throughout the Island of Puerto Rico*" would have been satisfied, if the Congress had seen fit to use it in this Section 2 of the Organic Act],<sup>4</sup>—with merely "geographical uniformity".

As above stated, Respondent's brief attempts no answer to our argument here; does not question the correctness of our analysis of this Court's opinion in *Knowlton v. Moore*; does not deny that this is the essential core of that opinion; does not question the accuracy of our citations of decisions of State courts cited on page 50 of our Supporting Brief; and does not cite any contrary decisions.

---

<sup>4</sup> Instead of using the *unqualified* word "uniform", as the Congress actually did.

And in the second place, the ~~second~~ sentence of Respondent's statement above quoted [*ante*, p. 4; top of p. 6 of Respondent's brief], that:

"It is equally clear that when Congress incorporated the requirement of uniformity in the Organic Act, it intended the same meaning that had always been attributed to it in the Constitution,"  
*embodies substantially the same fallacy.*

The Congress, in enacting the Organic Act of 1917, *chose not to use the same phrase* "uniform throughout the United States" employed by the Founding Fathers in the "analogous"<sup>5</sup> provision in Section 8 of Article I of the Constitution; *but chose instead to use the unqualified* single word "uniform", with regard to which this Court, seventeen years before, in its opinion in *Knowlton v. Moore*, had so clearly pointed out that it bore the very different connotation of an absolute requirement of "inherent" or "intrinsic" uniformity.

Under those circumstances, the same established rule of statutory construction here invoked by the Respondents operates directly against them, and in our favor; and requires, as is pointed out in our Supporting Brief [Point I-D, p. 42], that, as we there said:

"Plainly, the Congress must be presumed, in using that phraseology, to have done so in view of the decision of the United States Supreme Court in *Knowlton v. Moore*; and with Mr. JUSTICE WHITE's language in that opinion in mind;"

that is to say, with the intent that this unqualified word, "uniform", shall mean just what it says; that it shall import uniformity of every kind, both "intrinsic" or "inherent" uniformity among the taxpayers, and also "geographic uniformity" throughout the jurisdiction of the in-

---

<sup>5</sup> Respondent's word, "analogous". (Respondent's Brief p. 5; *ante*, p. 4.)

sular Government, as was recognized by the Circuit Court of Appeals for the First Circuit in *San Juan Trading Co. v. Sancho Bonet, Treasurer*, 114 F. (2d) 969, 972,<sup>6</sup> and in the earlier cases.

And, as is pointed out in our Supporting Brief (pp. 43-44, 54-57), that is likewise the interpretation heretofore always placed upon that provision of Section 2 of the Organic Act, alike by the insular Supreme Court and also by the Circuit Court of Appeals. Prior to this present case, there is no decision to be found, anywhere, questioning it, or even intimating that the word "uniform", there used, is to be construed as requiring only geographic uniformity. It had uniformly been construed as requiring *both* "inherent" and also "geographic" uniformity. Respondent's bald assertion to the contrary<sup>7</sup> is not even attempted to be supported by any analysis of the decisions.

Nor is Respondent's position strengthened, nor the lack of power in the Legislature aided, by Respondent's observation [*Brief*, p. 6] that "The provisions for progressive rates are not new; they were not added by the 1941 amendments, which merely altered the rates"; and that "they were part of the Insular Income Tax Act as originally enacted" in 1925; "and have been in effect continuously since 1925".<sup>8</sup> As said in our Petition (Point II-C, p. 46):

"The question here is a question of the extent of the power delegated to the Legislature by the Act of Congress. That power is not enlarged,—nor the lack of power supplied,—by the fact that taxpayers may not have heretofore assailed the Act in its earlier form, with its more moderate rates."

<sup>6</sup> Confer, as to this *San Juan Trading Co.* case, our Supporting Brief, pp. 44, 55.

<sup>7</sup> Top of second paragraph, p. 6, Respondent's Brief.

<sup>8</sup> The progressive tax provision of the earlier Puerto Rican Income Tax Act of 1921 had been held invalid under the "uniform" tax requirement of Section 2 of the Organic Act, by the United States District Court for the District of Puerto Rico, affirmed by the Circuit Court of Appeals for the First Circuit, in *Domenech, Treasurer v. Havemeyer*, *supra*, 49 F. (2d) 849, 852, cited in our Petition and Supporting Brief here (pp. 11, 20, 43, 52, 54, 55-56).

See, in this connection, *Sancho Bonet, Treasurer, v. Valiente*, 93 F. (2d) 327, 330-331, and *Same v. Acevedo Quiles*, 93 F. (2d) 331; (certiorari denied in each case, April 11, 1938, 303 U. S. 662; and rehearings denied, May 16, 1938, 304 U. S. 588), invalidating more than 1000 Puerto Rican statutes, many of them of great importance, enacted at various times all the way from the year 1900 up to 1937, because enacted in the form of "Joint Resolutions", instead of "by bill" as required by Section 34 of the Organic Act. The Circuit Court of Appeals there said, in the *Valiente case*, 93 F. (2d) *supra*, at p. 331:

"[4] It is further contended \* \* \* ; but here we are seeking the intention of Congress in the enactment of Section 34" [*in the present case, Section 2, of the Organic Act*], "not that of the Legislature of Puerto Rico".

See also *Porto Rico Telephone Co. v. People of Puerto Rico*, 47 F. (2d) 484, 486-487, invalidating, in 1931, quite a number of statutes enacted by the Legislature in 1919, which had been duly published as statutes,—on the ground that they had been, in reality, "pocket vetoed" by the Governor [*Confer, "Pocket Veto Case,"* 279 U. S. 655, 672], under the terms of the Organic Act.

And likewise, Respondent's final contention on this branch of the case, that (*Brief*, p. 6):

"Clearly, denial to the insular legislature of authority to provide for progressive rates of income taxation would effectively preclude enactment of an equitable tax based upon ability to pay,"

really answers itself. The great States of Illinois, Pennsylvania, Tennessee, and Washington,<sup>9</sup> as well as many others<sup>10</sup> get along without progressive income taxes.

<sup>9</sup> Supporting brief, p. 50. In Alabama, the State Constitution has been amended [25th Amendment] since the decision in 1920,

See also our Supporting Brief (Point II-D and E; pp. 47-48), as to the manifest purpose of the Congress in enacting this rigid limitation of the rule of absolute uniformity in taxation in the Organic Act for Puerto Rico, and in maintaining it in effect when relieving Puerto Rico (and the Philippines) from the burden of the Federal progressive taxes and heavy excess war taxes by the provisions of Section 5 of the War Revenue Act of October 3, 1917,—manifestly intending that the Puerto Rican people should not be burdened with the extra costs of carrying on the war; and that, therefore, the delegation of the taxing powers to the insular Legislature by Section 3 of the Organic Act, taken in connection with this limitation on the rule of taxation in the 22nd paragraph of Section 2 of the Act, should limit the local taxing powers of the Legislature to the powers of raising money for the ordinary expenses of the Government,—such only as are within the ordinary powers habitually exercised by State Legislatures. (*Confer: People of Puerto Rico v. Shell Company*, 302 U. S. 253, 261, quoted on page 78 of our Supporting Brief.)

If it be thought that this policy should be changed in view of present conditions, or for any other reason, then that is a question for the Congress to consider. The Congress possesses ample power to amend the Organic Act in any way it may see fit, and, of course, if it should so decide, to authorize the Legislature to provide for progressive income taxes in the Island.<sup>11</sup>

---

there cited, in *Eliasberg Bros. Merc. v. Grimes*, so as now to permit the legislature to levy progressive taxes. But in the other States named, it appears that the prohibition still stands. *Confer footnote 11, infra.*

<sup>10</sup> Connecticut, Florida, Indiana, Maine, Michigan, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Rhode Island, South Dakota, Texas, West Virginia and Wyoming; as well as the Territories of Alaska and the Canal Zone. [*Confer, Martindale-Hubbell Law Directory, 1944, Vol. II, Law Digests*]

<sup>11</sup> In analogy, for example, to the recent 25th amendment to the State Constitution of Alabama granting that power to the Alabama Legislature, which had previously been withheld from it under the decision of the Alabama Supreme Court in the case cited on page 50 of our Supporting Brief.

### Points III and IV.

As to our "Point III" (Supporting Brief pp. 57-59), that the taxation of stockholders upon dividends by these 1941 amendments is double taxation and therefore violative of this requirement of Section 2 of the Organic Act that the rule of taxation in the Island shall be "uniform"; and our "Point IV" (pp. 60-64) that the taxation of members of partnerships on partnership profits, after the partnership as a unit has already been taxed on the same profits, is even more flagrantly, not only double taxation of the same profits and hence a violation of that requirement that the rule of taxation in Puerto Rico be "uniform", but is also a taking of property without due process of law and a denial of the equal protection of the laws,—particularly in view of the provision of Section 2-(a)-(3), as amended by the amendatory Act No. 31 of April 12, 1941, broadening the definition of the term "partnership" for the purposes of the Act so as, expressly, to make it include in addition to all the ordinary types of partnership, "further, two or more persons under a common name or not, engaged in a joint venture for profit" (Supporting Brief, p. 63):—

In their attempted answer to these points *Respondent's Brief* (pp. 6-9) *utterly ignores the effect of the requirement of the Congress in Section 2 of the Organic Act, discussed in our first two Points [cf. ante, pp. 2-10] that the rule of taxation in the Island shall be "uniform"; and hence misses the entire point of our argument.* It does not answer it at all.

### Point V.

As to our Point V (Supporting Brief, pp. 64-72),—and our corresponding "Question 5" (Petition, pp. 26-27),—that the Legislature of Puerto Rico does not possess the power [without directly amending the community property laws of the Island] to levy the income tax against the husband alone upon the entire aggregate incomes of the conjugal community,—Respondents have no answer, except simply

to assert, without explanation or argument (*Brief*, pp. 10-11), that this is a question of purely local law upon which the decision of the insular Supreme Court is not to be disturbed unless "inescapably wrong", under the established rule of this Court as to reviews of decisions of Territorial courts of last resort, recently reaffirmed in this Court's decisions at its last term, on May 29, 1944, in No. 349, *De Castro v. Board of Commissioners of San Juan*, and No. 497, *Mario Mercado e Hijos v. Commins*.

That is likewise substantially the only ground upon which the Circuit Court of Appeals affirmed the judgment of the insular Supreme Court [Petition, p. 17; R. 62.]

But in thus placing their answer to this point solely upon this bare assertion, Respondents once more entirely overlook, or ignore, the essential grounds upon we are basing our Petition for a review of this case by this Court, insofar as it concerns this Point, wherein we point out (*Supporting Brief*, pp. 66-71 in connection with "Question 5," pp. 26-27, and paragraph 4, pp. 32-33, of the "Reasons for Granting the Writ" in the Petition) that the question here presented is not at all one of purely local law; but is, on the contrary, one of federal law turning upon the insular Supreme Court's misunderstanding and misapplication of the applicable decisions of this Court; and that, therefore, the erroneous decision of the insular Supreme Court in this case is not to be treated as one disposing of questions purely of local law within the meaning of the rule of this Court concerning review of such decisions of Territorial courts of last resort; but is a decision upon federal questions, turning chiefly upon the insular Court's misunderstanding and misapplication of applicable decisions of this Court; and is in any event clearly "inescapably wrong" within the meaning of that rule, since it is in conflict with the applicable decisions of this Court upon which it relies, and rests upon that Court's clear misunderstanding and misapplication of those decisions of this Court. Respon-

dents do not directly deny this. They attempt no answer to our position in this regard.

As is pointed out in our Petition and Supporting Brief,<sup>12</sup> there is no real question here as to what the pertinent Puerto Rican local laws actually are. They are the provisions of the Civil Code, the Code of Civil Procedure, the Code of Commerce, and the Political Code, relating to the community property laws of the Island, which the Legislature possesses no power to change by indirection or to repeal or amend by implication, or in any other way than by direct amendment [which the 1941 amendments to the Income Tax Act here in question do not purport to accomplish], in view of the prohibition of the Congress against such indirect amendments, contained in the 9th paragraph of Section 34 of the Organic Act.<sup>13</sup>

It is settled by the earlier decisions of the insular Supreme Court in *Casal v. Sancho Bonet, Treasurer*, 53 P. R. Rep. 609, 618, and in *National City Bank v. De la Torre (on rehearing)*, 54 P. R. Rep. 651, 654-655, quoted (p. 32) in our "Reasons for Granting the Writ" in our Petition here,—and not questioned or limited in any way by the insular Supreme Court's decision in the present case,—that "the conjugal partnership" in Puerto Rico "exists in an identical or similar form to that" in the States of the Union whose community property laws were before this Court in *Poe v. Seaborn, supra*, and its companion cases.<sup>14</sup> In that

<sup>12</sup> Petition, "Opinion of the Circuit Court of Appeals," and Footnotes 23 and 24 (pp. 16-18); "Question 5" (pp. 26-27); "Reasons for Granting the Writ," Par. 4 (pp. 32-33); and Supporting Brief, Point V, C to K inclusive (pp. 66-71).

<sup>13</sup> 39 Stat. 951, 962. So that any claim of a change in the community property laws otherwise than by direct amendment would involve a *federal question* of whether or not it fell within this prohibition of the Organic Act.

<sup>14</sup> State of Washington (*Poe v. Seaborn, supra*, 282 U. S. 101, 109-118); Arizona (*Goodell v. Koch*, 282 U. S. 118, 120-121); Texas (*Hopkins v. Bacon*, 282 U. S. 122, 125-127); Louisiana (*Bender v. Pfaff*, 282 U. S. 127, 130-132); and California, *as amended* (282 U. S. 792, 793-794, reversing the rule of the earlier case of

*De la Torre* case the amendment of the California Code had been discussed by the insular Supreme Court (54 P. R. Rep., *supra*, at pp. 653-655), and the resulting decision upon that amendment by the California Supreme Court [*Stewart v. Stewart*, 199 California 318], upon the basis of which this Court had decided in *United States v. Malcolm*, *supra*, 282 U. S. 792, 794, that the earlier California rule upon which the *Robbins* case (*United States v. Robbins*, *supra*, 269 U. S. 315) had been decided was no longer applicable; and the Puerto Rican Court had said in that *De la Torre* case on rehearing, as quoted on page 32 of our Petition, *supra*, that:

“Given the changes that have occurred in the institution in Puerto Rico, similar to those of California, we do not doubt in reality that the interest of the wife is something more than a mere expectancy and that it can be said that here, as well as in California, her interest in the property of the conjugal partnership is greater than that of a presumptive heir.”

In the present case the insular Supreme Court does not question or modify in any way the rule indicated by those foregoing cases; but on the contrary, fully accepting it, simply says (R. 14) that, under that rule, it finds itself constrained to follow the rule of this Court in,—“we see no escape for the petitioner from the doctrine laid down in.”—the *Robbins* case (*United States v. Robbins*, *supra*, 269 U. S. 315 [1926], based upon the earlier California law, rather than this Court’s later decisions in *Poe v. Seaborn*, *supra*, and its companion cases, based upon the laws of the other community property States of the Union and upon,—the *Malcolm* case, *supra*,—the California Code, as later amended along the lines indicated by the insular Supreme Court in the *De la Torre* case, *supra*, on rehearing.

The insular Supreme Court apparently arrives at this conclusion, that it should follow the doctrine of this Court

---

*United States v. Robbins*, 269 U. S. 315, with relation to California, because, as this Court there specifically states (at p. 794) “of amendments of the California statutes” since the *Robbins* case was decided). Confer, Petition, Footnote 42, p. 68.

in the earlier *Robbins* case rather than the doctrine of this Court's later decisions in *Poe v. Seaborn* and its companion case, solely on the ground that it thinks that there is some undefined middle ground lying somewhere between this Court's two lines of decision in the *Robbins* case on the one hand and in *Poe v. Seaborn* and its companion cases on the other hand. As the insular Supreme Court phrases it in its opinion (R. 13, quoted in our Petition, p. 17):

"Saying that 'the interest of the wife is something more than a mere expectancy' does not go so far as to call the wife's interest a vested one, and that is the only question before us at this time."

However, as we pointed out in Footnote 24 [pp. 17-18] to our Petition:

"But this question is not purely one of local law; but is primarily a federal question, of the power of the Legislature under the Organic Act of Congress for Puerto Rico, and under the Fifth Amendment, and the decisions of this Court, to levy an income tax against the husband on the wife's half share in the community property; and whether or not, within the meaning of the decisions of this Court on that subject, any distinction can be made, as to the degree of the wife's ownership in the community property, between its being 'in reality \* \* \* something more than a mere expectancy' [the insular Supreme Court's language, above; R. 13], and being 'vested' [this Court's phrase, in *Poe v. Seaborn* \* \* \* and companion cases \* \* \*].

"It is believed that no such distinction can properly be said to exist; and that within the meaning of this Court's decisions the wife's interest in the community property must be considered to be,—for the purposes of the determination of this Constitutional question,—either: (1) a 'mere expectancy' as the California courts formerly held that it was, under the former statutes of that State (*United States v. Robbins, supra, \* \* \**), now superseded by the later amendment to the California Code; or else (2) Something more than a 'mere expectancy',—that is to say, some form of *ownership*; and that any such ownership is something 'vested'

within the meaning of this Court's decisions in *Poe v. Seaborn, supra*, \* \* \*—[and its companion cases, including *United States v. Malcolm, supra*, after the amendment of the California Code along the lines indicated by the insular Supreme Court in its opinion on rehearing in the *De la Torre* case above quoted].

"There can be no middle ground. Either the wife's interest is a mere 'expectancy'; that is to say no ownership at all; or else it is ownership, something 'vested.'

"The question is not one of local law; and cannot properly be disposed of by simply treating it as such, and avoiding discussion of the insular Supreme Court's plainly erroneous opinion, on that ground."

The insular Supreme Court also, as pointed out in our Petition (Foot-note 16, p. 10), rested its opinion in part upon its arbitrary refusal to follow this Court's decision in *Hoeper v. Wisconsin Tax Commission*, 284 U. S. 206, saying with reference to that decision of this Court (R. 16):

"We recently went through a somewhat laborious process to distinguish a United States Supreme Court tax opinion which was shortly thereafter overruled. \* \* \* Whether that process will be repeated in the present situation is not for us to say. Impartial commentators of wide repute have expressed views to that effect."

Whether or not the insular Supreme Court is correct in taking that attitude as to a decision of this Court, and in resting its decision at least in part on that attitude, presents a federal question. That portion of the insular Supreme Court's decision rests upon its misunderstanding and misapplication of the decision of this Court in *Hoeper v. Wisconsin Tax Commission, supra*, on the one side; as it does on its misunderstanding and misapplication, on the other side, of this Court's decisions in *United States v. Robbins, supra*, 269 U. S. 315, decided in 1926, and the later cases of *Poe v. Seaborn, supra*, and its companion cases,

decided four years later in 1930; and on its wholly erroneous and completely unsupported attempt to find some undefined middle ground between the "mere expectancy" which this Court held in the *Robbins* case did not constitute ownership in the wife, and what this Court called a "vested" ownership in the wife of some type, in the later *Poe v. Scaborn* and its-companion cases.

The decision of the insular Supreme Court on these federal questions was clearly wrong; and since it rested upon misunderstanding and misapplication of decisions of this Court it must necessarily be considered "inescapably wrong". Nothing less can be said of that Court's conclusion (R. 14, *supra*) that, as it phrased it:

"In view of these considerations, we see no escape for the Petitioner from the doctrine laid down in *United States v. Robbins*, 269 U. S. 315."

Respondent's brief does not even attempt to defend, on the merits, this branch of the insular Supreme Court's decision. Respondents rest wholly upon their [*erroneous*] assertion that this "is plainly a question of local law"; and upon this Court's rule with relation to decisions of such purely local questions by Territorial courts of last resort. Respondents add nothing to this. As stated, they make no attempt to defend this branch of the insular Court's decision on the merits.

But in taking that position Respondents plainly misunderstand the very rule of this Court in relation to such Territorial decisions, upon which they rely. That rule, as we understand it, does not wholly close the door to review of insular Supreme Court decisions even on questions of purely local law; and does not say that the victorious party to such a decision may, when the decision is challenged on appeal to the Circuit Court of Appeals—or is challenged here on petition for certiorari,—simply stand on the bare fact of the decision and that it was upon a question of local law. In other words, this Court's rule does not have the

effect of clothing the decision of a Territorial Supreme court with the mantle and the authority of a decision of a Supreme Court of a sovereign State of the Union upon a question of local State law. The State courts possess the power to declare what the State law is. But the decisions of the Territorial courts are reviewable under the various acts of Congress, by the appropriate Circuit Courts of Appeals, and by this Court upon certiorari.

And, as we understand it, the essential point of the decision of this Court in the recent case of *De Castro v. The Board of Commissioners of San Juan*, No. 349 at the last term of this Court, decided May 29, 1944, upon which Respondents here rely, was (*slip opinion*, pp. 5-6):

“Thus interpreted and read in its context the principle, as restated in the *Bonet* case, that to justify reversal by the federal courts of a decision of an insular Supreme Court in a matter of local concern, ‘the error must be clear or manifest; the interpretation must be inescapably wrong’, is not a mere mechanical device which requires or admits, save in exceptional cases, of the summary disposition of appeals from that court. Nor does it minimize the importance or dignity of the appellate function in such cases. On the contrary, we think that it imposes on the Court of Appeals and on this Court the peculiarly delicate task of examining and appraising the local law in its setting, with the sympathetic disposition to safeguard in matters of local concern the adaptability of the law to local practices and needs. It is one which ordinarily cannot be performed summarily or without full argument and examination of the legal questions involved.” (*Italics supplied*)

Respondents do not meet this requirement of the rule by simply inviting attention to their [*erroneous*] contention that the decision on this branch of the case turns upon a question of purely local law, with no attempt to defend the insular Court’s decision on this point on the merits. Their complete failure to make any attempt to defend this branch of the decision, on the merits, is significant.

### Point VI.

With regard to sub-point "B" of Point VI of our Supporting Brief (pp. 72-75) and the corresponding "Question 6" of our Petition (pp. 27-28), Respondents once more rely simply upon their contention that this again is a question of local law, and "like other questions of interpretation of local statutes, rests primarily with the local Court (*Brief*, pp. 11-12). In support of this proposition they cite (*Brief*, p. 12) *Dorchy v. Kansas*, 264 U. S. 286, 290-291, one of the cases already cited by us in our Petition and Supporting Brief (p. 28). In so doing Respondents once again overlook the difference in this respect between the Supreme Court of the sovereign state of Kansas whose decision finally settled the State law, and that of a Territorial Supreme Court whose decision, despite the respect to which it is entitled under this Court's rule, nonetheless remains subject to review in the Circuit Courts of Appeal and in this Court.

Manifestly the question here of the validity of this Section 12 of this Statute, an Act of the Legislature of Puerto Rico as an agent or delegate of the Congress acting under the powers delegated to it by the Organic Act of the Congress, is a federal question; and is surely not one purely of local law. If it were not so, the insular Legislature, with the concurrence of the insular Supreme Court and the insular Executive acting together,—and all of them together constituting but an agency of the Congress in the exercise of its plenary powers over "the Territory or other Property belonging to the United States," under Article IV of the Constitution,—could lift themselves by their boot straps, and invest the Legislature with powers never granted it by the Congress, nor intended to be granted. And the limitations on the delegated powers of the different branches of the insular Government could thus in effect be construed away, and set at naught.

Any question relating to the powers of the Legislature, or to the validity of an act of the Legislature acting under the

Organic Act, must therefore necessarily in the last analysis be a federal question. And, as pointed out in our Petition and Supporting Brief, the decision of the insular Supreme Court on this branch of this case was clearly and, we submit, even "inescapably" wrong.

### Point VII.

In answer to our Point VII (*Supporting Brief*, pp. 75-78), correlative to our "Question 7", pp. 28-30 of our Petition), that the later Act No. 23 of November 21, 1941, expressly limiting the retroactivity of the insular Income Tax Act to the beginning of the calendar year 1941, by its further amendment to Section 3 of the Income Tax Act, operated as an amendment of the original Act from the date of the enactment of this last Amendatory Act of November 21, 1941 [*Posadas v. National City Bank*, 296 U. S. 497, 503; *Smallwood v. Gallardo*, 275 U. S. 56, 62; our *Supporting Brief*, p. 76; *Petition*, pp. 29-30],—Respondents surprisingly say only (pp. 13-14);

"No reason is advanced by taxpayers to justify attribution of such an extraordinary intention to the legislature, and the Supreme Court of Puerto Rico stated that it was 'unable to follow the petitioner in his contention' (R. 29). Since the local court's construction was not palpably erroneous, the Court below" [Circuit Court of Appeals] "properly sustained its ruling in this respect (R. 68)."

It is submitted that this is really no answer whatever to our contention on this branch of the case. Respondents have no ground for saying that, as above quoted, "No reason is advanced by taxpayer to justify" our contention here. On the contrary, the decision of the insular Supreme Court, and that of the Circuit Court of Appeals affirming it on this branch of the case, is clearly and plainly and "inescapably" in direct conflict with the decisions of this Court in *Posadas v. National City Bank*, *supra*, and *Smallwood v.*

*Gallardo, supra.* cited on the pages above indicated in our Petition and Supporting Brief.

And, for the same reasons indicated in relation to the preceding question (*ante*, pp. 17-18), this also is clearly a federal question, and not one purely of local law.

### Point VIII.

With regard to this final Point VIII of our Supporting Brief (pp. 78-81), in connection with our "Question 8" (pp. 30-31) and the "Additional Facts" (pp. 14-16) stated in our Petition,—that these 1941 amendments to the Income Tax Law of Puerto Rico, taken as a whole, are arbitrary and confiscatory, amounting to taking property for public use without compensation, and without due process of law,

"and amounting also to an attempt to levy taxes for assumed 'general welfare' purposes, rather than taxation for usual governmental purposes under the power delegated to the Legislature by the Congress by Section 3 of the Organic Act,"—

this whole point is summarily disposed of by the Respondents by saying shortly (*Brief*, p. 14):

"This tax was not imposed upon Puerto Ricans by an outside authority, but their own elected representatives. The local Supreme Court declared that to sustain taxpayer's contention in this regard would require 'a touch of arrogance' on its part (R. 39), and the court below held that the insular court was obviously correct in ruling that the tax of about \$6,500 on approximately \$39,000 of net income was not objectionable as confiscation under the guise of taxation (R. 69)."

But our contention on this branch of the case may not properly be thus summarily dismissed. As indicated in our Petition (pp. 14, 30-31) and Supporting Brief (pp. 78-81, *supra*), the insular Supreme Court considered it worthy of serious attention, and indicated some apparent hesitancy in deciding against it (*Opinion*, R. 35-39). As there pointed

out (R. 35), these 1941 amendments involved, for this petitioner at least, the almost astronomical increase of 623 per cent in his taxes over those required by the law as it stood before these amendments. And it is plain on the budget figures (*Confer, Petition*, pp. 15-16) that these unprecedented tremendous increases both in the normal tax and in the surtaxes were not required in any way for any normal or usual expenses of carrying on the insular government. On the contrary, it is perfectly plain that they were being levied in anticipation of undertaking some proposed or assumed projects of "general welfare", outside of and beyond carrying on the ordinary functions of the insular government.

In other words, they constitute an attempt by the insular Legislature to exercise the power of the Congress under the Constitution to tax for "general welfare" purposes (Const., Art. I, Sec. 8, Clause 1).

But that power of taxation for the "general welfare", has not been delegated by the Congress to the insular Legislature. [*Confer, Supporting Brief*, pp. 78-80.] It lies outside of and beyond the field of taxation for ordinary governmental purposes delegated by Section 3 of the Organic Act, and beyond "the subjects upon which Legislatures had been in the practice of acting with the consent and approval of the people they represented" [*People of Puerto Rico v. Shell Company*, 302 U. S. 253, 261; quoting *Maynard v. Hill*, 125 U. S. 190, 204]. These extraordinary taxes thus sought to be levied by the Legislature are therefore beyond its delegated powers, and void.

For all these reasons, as well as those stated in our original Petition and Supporting Brief, and in view of the importance and of the seriousness of the questions presented, it is believed that this case should be reviewed by this

Court; and that, therefore, the writ of certiorari should be granted.

Respectfully submitted,

WILLIAM CATTRON RIGBY,  
OSCAR SOUFFRONT,  
J. J. ORTIZ ALIBRAN,  
*Attorneys for Petitioner.*

RIGBY, LEON and WEILL,  
FRED W. LLEWELLYN,  
*Of Counsel.*